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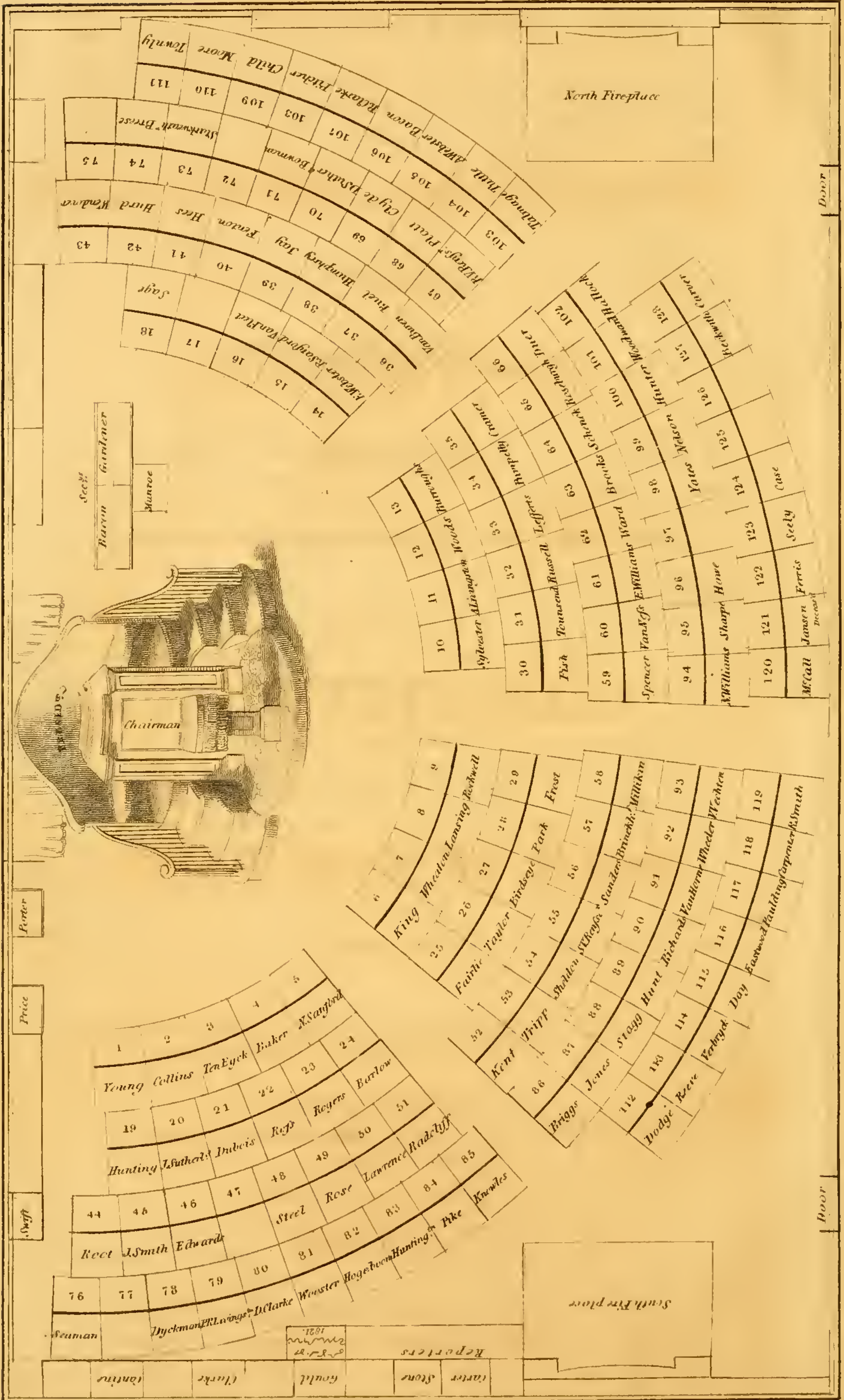
NEW-YORK

STATE CONVENTION,

1821.

PLAN OF THE ASSEMBLY-CHAMBER.

Occupied by the Convention, 1821.



REPORTS

OF THE

Proceedings and Debates

OF THE

CONVENTION

OF 1821,

ASSEMBLED FOR THE PURPOSE OF AMENDING

THE

CONSTITUTION

OF THE

State of New-York:

CONTAINING

ALL THE OFFICIAL DOCUMENTS, RELATING TO THE SUBJECT, AND OTHER VALUABLE MATTER.

BY NATHANIEL H. CARTER AND WILLIAM L. STONE,
REPORTERS; AND
MARCUS T. C. GOULD,
STENOGRAPHER.

ALBANY:
PRINTED AND PUBLISHED BY E. AND E. HOSFORD.
....
1821.

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INTRODUCTION.

The volume which is now presented to the public, is the work of different hands; and lays claim to no other merit, than that of being a faithful and impartial record of the proceedings of the Convention, which assembled at Albany, on the 28th of August, 1821, and closed its session on the 10th of November following. It consists of the constitution of 1777—the acts of the legislature, of March and April, 1821, recommending a Convention—a minute and full journal of the proceedings and debates of the Convention, arranged in the order in which they occurred, including the reports of the several committees,—and the ayes and noes on all important questions—the constitution, as amended—together with an appendix, containing several documents relating to the Convention—and a well digested index of the whole volume.

In preparing the work for the press, its joint authors have availed themselves, as far as practicable, of the corrections suggested by the members of the Convention, of that part of the proceedings, which has appeared in the public journals; and the speeches, which have not been published, are given with as much accuracy, as the rapidity with which the volume was executed would allow. The editors are not sensible of any want of care or attention, to render these reports correct and satisfactory; but with all their industry and labour, it is not improbable, that amidst other avocations, and the hurry in which the work went to press, errors may have escaped their observation; and in some cases, perhaps, injustice has been done to the speakers.

If, on examination, such defects in the work shall be found, the reporters trust they will find an apology in the difficulty of hearing at all times distinctly, speakers in a remote part of the house; of apprehending their arguments always when they were heard; and of following with minute accuracy the chain of proceeedings, amidst the intricacies and confusion, in which the Convention sometimes found itself involved. On this topic they will merely add, that they have on all occasions assiduously laboured to give a fair and impartial transcript of the remarks of the speaker.

The office of a reporter is in all respects invidious and ungrateful. While its duties are arduous and responsible, requiring great labour and patient industry, the most unwearied and faithful discharge of these duties is attended with no adequate reward, in a literary point of view. The nature of the office precludes the exercise of those faculties of the mind, which can alone confer dignity and reputation upon literary efforts; and the reporter, in his

best estate, is but a manufacturer of intellectual wares, from such raw materials, as are furnished at his hands. This reduces his province to very narrow limits; and the only reputation he can expect, must arise from the exercise of his judgment, in moulding the materials into fabrics for which they were intended. It would be equally incompatible with the principles of correct taste, and with the fidelity of the reporter, to attempt to invest plain sense and dry argument, with the embellishments of fancy, or the elaborate elegance of diction. It is the duty of the reporter to give the speeches, both in matter and manner, as they were delivered, except in such inadvertent inaccuracies as might be supposed to occur in the heat and hurry of debate.

Conscious of these restrictions and limitations, the compilers of this volume did not undertake the work with the hope of acquiring literary reputation. Two of them are editors of public journals; and the immediate object in view, was to supply their own, and other papers, with the daily proceedings of the Convention. In addition to this primary object, it was believed to be important, both to the present generation and to posterity, to preserve in a more regular and durable form, than the fugitive columns of a newspaper, a full and accurate record of the proceedings of a body, in which was to be agitated and settled the first principles of a free government, and to which was assigned the duty of amending, to an unlimited extent, the constitution of a great and flourishing republic.

The compilers of this volume have not been disappointed in their anticipations of the number and importance of the amendments, which would be proposed and discussed. Public expectation has been even surpassed, both in respect to the variety and magnitude of the changes, which have been recommended by the Convention. Scarcely a pillar has been left standing in the venerable fabric, erected by the political fathers of the state. The Legislative, Executive, and Judicial Departments, have all been new-modelled, and undergone radical and important alterations. The Appointing Power, on the discreet regulation of which depend in a great measure the dignity and welfare of the state, and which has at its disposal an annual patronage, to the amount of about two millions of dollars, has been shifted to different hands, and organized on a new and untried plan. Other important alterations, of a miscellaneous nature, have been recommended; and an almost entirely new constitution will be submitted, for the adoption or rejection of the citizens of this state, on the third Tuesday of January next.

In the discussion of these amendments, all the principles of a free government, and the interests of a great and free people, have passed in review. The political history of the state has been retraced, and its vicissitudes examined, from the days of its colonial vassalage, to its present proud and enviable condition. The gradual changes of the state, in its government, its laws, its civil, political, and religious institutions, have all undergone a rigid examination. In a word, there is scarcely a topic, connected with the past history, the present situation, or future prospects of our state, which has not been introduced, in the course of these debates. Frequent reference has also been made to the governments of other states and other countries, exhibiting a comparative and analogical view in relation to our

own institutions. From these considerations it must be evident, that in this volume will be found a great body of historical facts, and much political information, which it is important to preserve.

Of the character of the Convention; of the wisdom or indiscretion of its proceedings; and of the expediency or inexpediency of the proposed amendments, this is neither the time nor the place for discussion. The Reporters commenced their labours with a full determination, that whatever might be their own political sentiments and feelings, they should not be permitted to mingle in their duties, or give the slightest tinge of partiality to their reports; nor will any opinion on the result of the Convention be now expressed.

Whatever may be the event of the conflicting sentiments of the community, with regard to the amended constitution, it cannot materially affect the value of this volume. The act of calling a Convention, of electing delegates with unlimited powers, and the proceedings of that body, constitute a great POLITICAL REVOLUTION, in which the people of this state, in a silent and peaceable manner, resumed for a time their delegated power, and original sovereignty; and claimed the privilege of revising and amending, by their representatives, the constitution, which forms the basis of their government, and the guarantee of their rights and liberties. Whether the amended constitution shall be adopted or not, an authentic record of the events, connected with this revolution, will be valuable, both as preparatory to the ultimate decision of the people, and as matter of history.

It is important that the people, previous to the adoption or rejection of the constitution, which will in a few weeks be submitted for their consideration, should have a full view of the whole ground, and be made acquainted with the arguments, which have been advanced by their representatives, for and against the several amendments. The question which is about to be taken will be final; and the constitution which shall be adopted, on the last Tuesday of January next, will probably endure for ages. Before a decision of such magnitude, and so momentous in its consequences, shall be made, it is important that authentic and correct information should be extensively diffused through the community.

It is believed this volume contains a more full and accurate exposition of the views of the Convention, on the great variety of subjects, which were discussed and acted on by that body, than can be obtained from any other source. The official journal kept by the secretaries, however accurate, will contain little more than the outlines of the proceedings, and will furnish none of the reasons, or principles, on which the amendments are grounded. Five thousand copies of the amended constitution, are the only official documents, which will go forth to the people, to guide and direct them in the decision they are about to make. These naked copies, blended as the amendments are with the provisions of the existing constitution, will afford no opportunity of contrasting the alterations with other propositions, on the same subjects, or of the arguments, which were urged in favour and against their adoption.

In the volume now presented to the public, the reader will find a copy of the old constitution; the amendments recommended, in a distinct form; and the amended constitution, as proposed to the people. He will also be able

to take a full and comprehensive view of the relative strength and confidence with which each amendment was adopted, and of analogous plans and propositions, out of which a choice was made.

Should the constitution, which has been recommended for the ratification of the people, be approved, this volume, it is conceived, will be a valuable historical memorial, embracing all the official documents connected with the Convention, and furnishing the best interpretation and exposition of the spirit of the constitution, by explaining the views and intentions of its framers.

To those who look upon the Convention and the events connected with it, as ordinary occurrences, and who do not reflect on the nature and extent of this revolution, and its remote bearing on the future character and history of the state, a volume of seven hundred pages may appear disproportionate to the subject to which it relates. But the compilers are among those who believe, that the last year will form a memorable period in the annals of the state; and that events which may now seem unimportant, from our familiarity with them, will hereafter assume a different character, and be sought for with avidity. Circumstantial records which now pass unheeded, may in time become valuable to the jurist, in deciding upon the construction of the constitution; to the historian, in delineating the character of the age; or at least to the antiquary, by enriching his library, without the labour of searching for documents, scattered amidst the rubbish and ruins of years.

These are some of the considerations, by which the reporters have been actuated in incurring the labour and expense of compiling and publishing this volume. No pains have been spared to render it in all respects as complete as possible, and to present it in a dress, and style of execution, which may recommend it to public patronage.

Albany, 15*th November*, 1821.

THE

CONSTITUTION

OF THE

State of New-York.

In Convention of the Representatives of the State of New-York.

KINGSTON, 20*th APRIL*, 1777.

Government by Congresses and Committees.

WHEREAS the many tyrannical and oppressive usurpations of the king and parliament of Great-Britain, on the rights and liberties of the people of the American colonies, had reduced them to the necessity of introducing a government by congresses and committees, as temporary expedients, and to exist no longer than the grievances of the people should remain without redress:

AND WHEREAS the congress of the colony of New-York did, on the thirty-first day of May, now last past, resolve as follows, viz:

Its object temporary.

"WHEREAS, the present government of this colony, by congress and committees, was instituted while the former government, under the crown of Great-Britain, existed in full force;—and was established for the sole purpose of opposing the usurpation of the British parliament, and was intended to expire on a reconciliation with Great-Britain, which it was then apprehended would soon take place, but is now considered as remote and uncertain.

Its inconveniences.

"AND WHEREAS many and great inconveniences attend the said mode of government by congress and committees, as of necessity, in many instances, legislative, judicial and executive powers have been vested therein, especially since the dissolution of the former government, by the abdication of the late governor, and the exclusion of this colony from the protection of the king of Great-Britain.

"AND WHEREAS the continental congress did resolve as followeth, to wit:

Recital, and

"WHEREAS his Britannic Majesty, in conjunction with the lords and commons of Great-Britain, has by a late act of parliament, excluded the inhabitants of these united colonies, from the protection of his crown: And whereas no answers whatever, to the humble petition of the colonies for redress of grievances and reconciliation with Great-Britain, has been, or is likely to be given, but the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction of the good people of these colonies: And whereas it appears absolutely irreconcileable to reason and good conscience, for the people of these colonies, now to take the oaths and affirmations necessary for the support of any government under the crown of Great Britain; and it is necessary that the exercise of every kind of authority under the said crown, should be totally suppressed, and all the powers of government exerted under the authority of the people of the colonies, for the preservation of internal peace, virtue, and good order, as well as for the defence of our lives, liberties, and properties against the hostile invasions and cruel depredations of our enemies: Therefore,

Resolution of the General Congress, recommending the institution of new governments.

"RESOLVED, That it be recommended to the respective assemblies and conventions of the united colonies, where no government sufficient to the exigencies of their affairs has been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general."

Powers of the Provincial Congress inadequate.

"AND WHEREAS doubts have arisen, whether this congress are invested with sufficient power and authority to deliberate and determine on so important a subject as the necessity of erecting and constituting a new form of government and internal police, to the exclusion of all foreign jurisdiction, dominion, and control whatever. And whereas it appertains of right solely to the people of this colony to determine the said doubts: Therefore,

Recommendation to elect deputies with adequate powers.

"RESOLVED, That it be recommended to the electors in the several counties in this colony, by election in the manner and form prescribed for the election of the present congress, either to authorize (in addition to the power vested in this congress) their present deputies, or others in the stead of their present deputies, or either of them, to take into consideration the necessity and propriety of instituting such new government as in and by the said resolution of the continental congress is described and recommended: And, if the majority of the counties, by their deputies in provincial congress, shall be of opinion that such new government ought to be instituted and established, then to institute and establish such a government as they shall deem best calculated to secure the rights, liberties, and happiness of the good people of this colony; and to continue in force until a future peace with Great Britain shall render the same unnecessary. And

Time and place of meeting.

"RESOLVED, That the said election in the several counties ought to be had on such day, and at such place or places, as, by the committee of each county respectively shall be determined. And it is recommended to the said committees, to fix such early days for the said elections, as that all the deputies to be elected have sufficient time to repair to the city of New-York by the second Monday in July next; on which day all the said deputies ought punctually to give their attendance.

"AND WHEREAS the object of the aforegoing resolution is of the utmost importance to the good people of this colony:

"RESOLVED, That it be, and it is hereby earnestly recommended to the committees, freeholders, and other electors, in the different counties in this colony, diligently to carry the same into execution."

Appointment of this Convention.

AND WHEREAS the good people of the said colony, in pursuance of the said resolution, and reposing special trust and confidence in the members of this convention, have appointed, authorized, and empowered them, for the purposes, and in the manner, and with the powers in and by the said resolve, specified, declared, and mentioned.

AND WHEREAS the delegates of the United American States, in general congress convened, did, on the fourth day of July now last past, solemnly publish and declare in the words following, viz:

Proceedings of the General Congress.

"WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Reasons thereof.

"We hold these truths to be self evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of those ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such princi-

ples, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such now is the necessity which constrains them to alter their former system of government. The history of the present king of Great-Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this let facts be submitted to a candid world.

Grievances.

"He has refused his assent to laws the most wholesome and necessary for the public good.

"He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

"He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them and formidable to tyrants only.

"He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

"He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

"He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers incapable of annihilation, have returned to the people at large, for their exercise; the state remaining in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

"He has endeavoured to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others, to encourage their migrations hither, and raising the conditions of new appropriations of lands.

"He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

"He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

"He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

"He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

"He has affected to render the military independent of, and superior to the civil power.

"He has combined with others, to subject us to a jurisdiction, foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

"For quartering large bodies of troops among us:

"For protecting them by a mock trial, from punishment for any murders they should commit on the inhabitants of these states:

"For cutting off our trade with all parts of the world:

"For imposing taxes on us, without our consent:

"For depriving us, in many cases, of the benefits of trial by jury:

"For transporting us beyond seas, to be tried for pretended offences:

"For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging

its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

"For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

"For suspending our own legislatures, and declaring themselves invested with power, to legislate for us in all cases whatsoever.

"He has abdicated government here, by declaring us out of his protection, and waging war against us.

"He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

"He is at this time transporting large armies of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

"He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

"He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

"In every stage of these oppressions, we have petitioned for redress, in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked, by every act which may define a tyrant, is unfit to be the ruler of a free people.

"Nor have we been wanting in attentions to our British brethren. We have warned them from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexion, and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them as we hold the rest of mankind—enemies in war; in peace, friends.

Declaration of Independence.

"We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the supreme judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honour."

Approved.

And whereas this convention, having taken this declaration into their most serious consideration, did, on the ninth day of July last past, unanimously resolve that the reasons assigned by the continental congress, for declaring the united colonies free and independent states, are cogent, and conclusive; and that, while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in supporting it.

Powers of the convention.

By virtue of which several acts, declarations, and proceedings, mentioned and contained in the afore-recited resolves or resolutions of

the general congress of the United American States, and of the congress or conventions of this state, all power whatever therein hath reverted to the people thereof, and this convention hath, by their suffrages and free choice, been appointed, and among other things, authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state, most conducive of the happiness and safety of their constituents in particular, and of America in general.

All authority derived from the people.

I. This convention, therefore, in the name and by the authority of the good people of this state, DOTH ORDAIN, DETERMINE AND DECLARE, That no authority shall, on any pretence whatever, be exercised over the people or members of this state, but such as shall be derived from and granted by them.

Legislative power.

II. This convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That the supreme legislative power within this state, shall be vested in two separate and distinct bodies of men; the one to be called the Assembly of the state of New-York; the other to be called the Senate of the state of New-York; who, together, shall form the Legislature, and meet once at least in every year for the despatch of business.

Council of Revision.

III. AND WHEREAS laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: BE IT ORDAINED, That the governor, for the time being, the chancellor and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration under any pretence whatever. And that all bills which have passed the Senate and Assembly, shall, before they become laws, be presented to the said council for their revisal and consideration; and if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the senate or house of assembly, in whichsoever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to re-consider the said bill. But if after such re-consideration, two thirds of the said senate or house of assembly, 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 re-considered, and if approved by two thirds of the members present, shall be a law.

And in order to prevent any unnecessary delays,

Bills to become laws if not returned in ten days.

Be it further ordained, That if any bill shall not be returned by the council, within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case, the bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days.

The Assembly.

IV. That the assembly shall consist of at least seventy members, to be annually chosen in the several counties, in the proportion following, viz:

Representation apportioned to each county.

For the City and County of New-York,	Nine.
The City and County of Albany,	Ten.
The County of Dutchess,	Seven.
The County of Westchester,	Six.
The County of Ulster,	Six.
The County of Suffolk,	Five.
The County of Queens,	Four.
The County of Orange,	Four.

Note. Representation increased to 112 Members of Assembly, and counties increased to 47.—Edi.

The County of Kings,	Two.
The County of Richmond,	Two.
* The County of Tryon,	Six.
† The County of Charlotte,	Four.
‡ The County of Cumberland,	Three.
‡ The County of Gloucester,	Two.

Census, when and how to be taken.

V. That as soon after the expiration of seven years, subsequent to the termination of the present war, as may be, a census of the electors and inhabitants in this state be taken, under the direction of the legislature. And if on such census it shall appear, that the number of representatives in assembly from the said counties is not justly proportioned to the number of electors in the said counties respectively, that the legislature do adjust and apportion the same by that rule. And further, that once in every seven years, after the taking of the said first census, a just account of the electors resident in each county shall be taken; and if it shall thereupon appear that the number of electors in any county, shall have increased or diminished one or more seventieth parts of the whole number of electors, which on the said first census shall be found in this state, the number of representatives for such county shall be increased or diminished accordingly, that is to say, one representative for every seventieth part, as aforesaid.

Ballot, opinion of voting by.

VI. *And whereas* an opinion hath long prevailed among divers of the good people of this state, that voting at elections by ballot, would tend more to preserve the liberty and equal freedom of the people, than voting *viva voce*: To the end, therefore, that a fair experiment be made, which of those two methods of voting is to be preferred:

After the war experiment to be made:

Be it ordained, That as soon as may be, after the termination of the present war, between the United States of America and Great-Britain, an act or acts be passed by the legislature of this state, for causing all elections thereafter to be held in this state for senators and representatives in assembly, to be by ballot, and directing the manner in which the same shall be conducted. *And whereas* it is possible, that after all the care of the legislature, in framing the said act or acts, certain inconveniences and mischiefs, unforeseen at this day, may be found to attend the said mode of electing by ballot:

To be abolished if found inconvenient.

It is further ordained, That if after a full and fair experiment shall be made of voting by ballot aforesaid, the same shall be found less conducive to the safety or interest of the state, than the method of voting *viva voce*, it shall be lawful and constitutional for the legislature to abolish the same: *Provided* two thirds of the members present in each house respectively shall concur therein. And further, that during the continuance of the present war, and until the legislature of this state shall provide for the election of senators, and representatives in assembly, by ballot, the said elections shall be made *viva voce*.

Qualifications of electors.

VII. That every male inhabitant of full age, who shall have personally resided within one of the counties of this state, for six months immediately preceding the day of election, shall at such election, be entitled to vote for representatives of the said county in assembly; if during the time aforesaid, he shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this state: *Provided always*, That every person who now is a freeman of the city of Albany, or who was made a freeman of the city of New-York, on or before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities respectively, shall be entitled to vote for representatives in assembly within his said place of residence.

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* Name afterwards altered to Montgomery.—† Name afterwards altered to Washington.—‡ Ceded to Vermont.—Editors

VIII. That every elector, before he is admitted to vote, shall, if required by the returning officer or either of the inspectors, take an oath, or if of the people called quakers, an affirmation, of allegiance to the state.

Oath of allegiance.

IX. That the assembly thus constituted, shall chuse their own speaker, be judges of their own members, and enjoy the same privileges, and proceed in doing business, in like manner as the assemblies of the colony of New-York of right formerly did; and that a majority of the said members shall, from time to time, constitute a house to proceed upon business.

Privileges of members of Assembly.

A quorum.

X. And this convention doth further, in the name, and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the senate of the state of New-York shall consist of twenty-four freeholders, to be chosen out of the body of the freeholders, and that they be chosen by the freeholders of this state, possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon.

Number of Senators, and by whom chosen.

Vide amendments to constitution.

XI. That the members of the senate be elected for four years, and, immediately after the first election, they be divided by lot into four classes, six in each class, and numbered one, two, three, and four; and that the seats of the members of the first class shall be vacated at the expiration of the first year; the second class the second year, and so on continually, to the end, that the fourth part of the senate, as nearly as possible, may be annually chosen.

Their term of election, and rotation in office.

XII. That the election of senators shall be after this manner: that so much of this state as is now parcelled into counties, be divided into four great districts: the southern district to comprehend the city and county of New-York, Suffolk, West-Chester, Kings, Queens, and Richmond counties; the middle district to comprehend the counties of Dutchess, Ulster, and Orange; the western district, the city and county of Albany, and Tryon county; and the eastern district, the counties of Charlotte, Cumberland and Gloucester. That the senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, viz: in the southern district, nine; in the middle district, six; in the western district, six; and in the eastern district, three. *And be it ordained*, that a census shall be taken as soon as may be, after the expiration of seven years from the termination of the present war, under the direction of the legislature; and if, on such census, it shall appear that the number of senators is not justly proportioned to the several districts, that the legislature adjust the proportion, as near as may be, to the number of freeholders, qualified as aforesaid, in each district. That when the number of electors within any of the said districts shall have increased one twenty-fourth part of the whole number of electors, which by the said census shall be found to be in this state, an additional senator shall be chosen by the electors of such district. That a majority of the number of senators, to be chosen as aforesaid, shall be necessary to constitute a senate sufficient to proceed upon business; and that the senate shall, in like manner with the assembly, be the judges of its own members. *And be it ordained*, that it shall be in the power of the future legislatures of this state, for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts, as to them shall appear necessary.

Manner of choosing.

Census, and apportionment of the Senators.

A quorum.

To be judges of their own members.

Other counties and districts may be erected.

XIII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that no member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to the subjects of this state by this constitution, unless by the law of the land, or the judgment of his peers.

No person to be disfranchised but by law.

XIV. That neither the assembly or the senate shall have power to adjourn themselves for any longer time than two days, without the mutual consent of both.

No adjournment of either house for more than two days but by mutual consent.

Conference between them.

XV. That, whenever the assembly and senate disagree, a conference shall be held in the presence of both, and be managed by committees, to be by them respectively chosen by ballot. That the doors, both of the senate and assembly, shall at all times be kept open to all persons, except when the welfare of the state shall require their debates to be kept secret. And the journals of all their proceedings shall be kept in the manner heretofore accustomed by the general assembly of the colony of New-York; and, except such parts as they shall, as aforesaid, respectively determine not to make public, be, from day to day, if the business of the legislature will permit, published.

Doors to be open, and

Journals how kept and published.

XVI. It is, nevertheless, provided, that the number of senators shall never exceed one hundred, nor the number of the assembly three hundred; but that, whenever the number of senators shall amount to one hundred, or of the assembly to three hundred, then, and in such case, the legislature shall, from time to time hereafter, by laws for that purpose, apportion and distribute the said one hundred senators and three hundred representatives among the great districts, and counties of this state, in proportion to the number of their respective electors, so that the representation of the good people of this state, both in the senate and assembly, shall for ever remain proportionate and adequate.

Number of the Senate and Assembly limited.

See Amendments to Constitution.

XVII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the supreme executive power and authority of this state shall be vested in a governor; and that, statedly, once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this state shall be, by ballot, elected governor, by the freeholders of this state, qualified, as before described, to elect senators, which elections shall be always held at the times and places of choosing representatives in assembly for each respective county; and that the person who hath the greatest number of votes within the said state, shall be the governor thereof.

Executive power vested in a governor.

When and how to be chosen.

XVIII. That the governor shall continue in office three years, and shall, by virtue of his office, be general and commander in chief of all the militia, and admiral of the navy, of this state; that he shall have power to convene the assembly and senate on extraordinary occasions; to prorogue them from time to time, provided such prorogations shall not exceed sixty days, in the space of any one year; and, at his discretion, to grant reprieves and pardons to persons convicted of crimes other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature, at their subsequent meeting, and they shall either pardon, or direct the execution of the criminal, or grant a further reprieve.

His power.

XIX. That it shall be the duty of the governor to inform the legislature, at every session, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare, and prosperity; to correspond with the continental congress, and other states; to transact all necessary business with the officers of government, civil and military; to take care that the laws are faithfully executed, to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature.

And duty.

XX. That a lieutenant governor shall, at every election of a governor, and as often as the lieutenant governor shall die, resign, or be removed from office, be elected in the same manner with the governor, to continue in office until the next election of a governor; and such lieutenant governor shall, by virtue of his office, be president of the senate, and, upon an equal division, have a casting vote in their decisions, but not vote on any other occasion.

Lt. Governor.

To be president of the senate.

And in case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant governor shall exercise all the power and authority appertaining to the office of governor, until another be chosen, or the go-

His further power and duty.

vernor absent, or impeached, shall return, or be acquitted. *Provided*, that where the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall still continue in the command of all the military force of the state, both by sea and land.

In his absence a president to be chosen by the senate.

XXI. That whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senators shall have power to elect one of their own members to the office of president of the senate, which he shall exercise *pro hac vice*. And if, during such vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall, in like manner as the lieutenant governor, administer the government, until others shall be elected by the suffrage of the people, at the succeeding election.

His power and duty.

Treasurer.

XXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the treasurer of this state shall be appointed by act of the legislature, to originate with the assembly. *Provided*, that he shall not be elected out of either branch of the legislature.

Council of appointment.

XXIII. That all officers, other than those who, by this constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council, for the appointment of the said officers, of which the governor for the time being, or the lieutenant governor, or the president of the senate, (when they shall respectively administer the government,) shall be president, and have a casting voice, *but no other vote*; and, with the advice and consent of the said council, shall appoint all the said officers; and that a majority of the said council be a quorum: *And further*, The said senators shall not be eligible to the said council for two years successively.

See amendments to constitution.

Tenure of certain offices.

XXIV. That all military officers be appointed during pleasure; that all commissioned officers, civil and military, be commissioned by the governor; and that the chancellor, the judges of the supreme court, and first judge of the county court in every county, hold their offices during good behaviour, or until they shall have respectively attained the age of sixty years.

Tenure of certain judicial offices.

XXV. That the chancellor and judges of the supreme court shall not, at the same time, hold any other office, excepting that of delegate to the general congress, upon special occasions; and that the first judges of the county courts, in the several counties, shall not, at the same time, hold any other office, excepting that of senator, or delegate to the general congress. But if the chancellor, or either of the said judges be elected or appointed to any other office, excepting as is before excepted, it shall be at his option in which to serve.

Sheriffs and coroners.

XXVI. That sheriffs and coroners be annually appointed; and that no person shall be capable of holding either of the said offices more than four years successively; nor the sheriff of holding any other office at the same time.

Registers, clerks, and marshal, by whom appointed.

XXVII. *And be it further ordained*, That the register, and clerks in chancery, be appointed by the chancellor; the clerks of the supreme court, by the judges of the said court; the clerk of the court of probates, by the judge of the said court; and the register and marshal of the court of admiralty, by the judge of the admiralty. The said marshals, registers, and clerks, to continue in office during the pleasure of those by whom they are to be appointed as aforesaid.

Attornies, solicitors, and counsellors, by whom appointed.

And all attorneys, solicitors, and counsellors at law, hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court in which they shall respectively plead or practice; and be regulated by the rules and orders of the said courts.

Duration of offices.

XXVIII. *And be it further ordained*, That where, by this constitution, the duration of any office shall not be ascertained, such office shall

be construed to be held during the pleasure of the council of appointment: *Provided*, that new commissions shall be issued to judges of the county courts (other than to the first judge,) and to justices of the peace, once at the least in every three years.

Town officers.

XXIX. That town clerks, supervisors, assessors, constables, and collectors, and all other officers, heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of the legislature.

Loan officers, county treasurer's and supervisor's clerks.

That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature.

Delegates to congress.

Vide the manner of electing members of congress directed by the constitution of the United States.

XXX. That delegates to represent this state in the general congress of the United States of America be annually appointed, as follows, to wit: The senate and assembly shall each openly nominate as many persons as shall be equal to the whole number of delegates to be appointed; after which nomination they shall meet together, and those persons named in both lists, shall be delegates; and out of those persons whose names are not on both lists one half shall be chosen by the joint ballot of the senators and members of assembly, so met together as aforesaid.

Style of laws and form of process.

XXXI. That the style of all laws shall be as follows, to wit: "*Be it enacted by the people of the state of New-York, represented in senate and assembly*, and that all writs and other proceedings shall run in the name of *the people of the State of New-York*, and be tested in the name of the chancellor, or chief judge of the court from whence they shall issue.

Court for the trial of impeachments and the correction of errors.

XXXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that a court shall be instituted for the trial of impeachments and the correction of errors, under the regulations which shall be established by the legislature, and to consist of the president of the senate for the time being, and the senators, chancellor, and judges of the supreme court, or the major part of them; except that when an impeachment shall be prosecuted against the chancellor, or either of the judges of the supreme court, the person so impeached shall be suspended from exercising his office, until his acquittal: and, in like manner, when an appeal, from a decree in equity, shall be heard, the chancellor shall inform the court of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error, on a question of law, on a judgment in the supreme court, the judges of the court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

Power of impeachment, and manner of proceeding.

XXXIII. That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two-third parts of the members present shall consent to and agree in such impeachment. That, previous to the trial of every impeachment, the members of the said court shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence; and that no judgment of the said court shall be valid unless it shall be assented to by two-third parts of the members then present; nor shall it extend farther than to removal from office and disqualification to hold or enjoy any place of honour, trust, or profit, under this state. But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment, according to the laws of the land.

Party accused to be allowed counsel.

XXXIV. *And it is further ordained*, That in every trial on impeachment, or indictment for crimes or misdemeanors, the party impeached or indicted shall be allowed counsel, as in civil actions.

Law of the state.

XXXV. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, and DECLARE, that such parts of the common law of England, and of the

statute law of England and Great-Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the 19th day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this state, subject to such alterations and provisions as the legislature of this state shall, from time to time, make concerning the same. That such of the said acts as are temporary, shall expire at the times limited for their duration respectively. That all such parts of the said common law, and all such of the said statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or prerogatives, claimed or exercised by the king of Great-Britain and his predecessors, over the colony of New-York and its inhabitants, or are repugnant to this constitution, be, and they hereby are, abrogated and rejected. And this convention doth further ordain, that the resolves or resolutions of the congress of the colony of New-York, and of the convention of the state of New-York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this state; subject, nevertheless, to such alterations and provisions as the legislature of this state may, from time to time, make concerning the same.

Grants by the King after a certain period void.

XXXVI. *And be it further ordained,* That all grants of land within this state, made by the king of Great-Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but that nothing in this constitution contained, shall be construed to affect any grants of land, within this state, made by the authority of the said king or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them, made prior to that day. And that none of the said charters shall be adjudged to be void, by reason of any nonuser or misuser of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this constitution. *And further,* that all such of the officers, described in the said charters respectively, as, by the terms of the said charters, were to be appointed by the governor of the colony of New-York, with or without the advice and consent of the council of the said king, in the said colony, shall henceforth be appointed by the council established by this constitution for the appointment of officers in this state, until otherwise directed by the legislature.

Charter rights and former grants preserved.

XXXVII. *And whereas* it is of great importance to the safety of this state that peace and amity with the Indians within the same, be at all times supported and maintained: And whereas the frauds, too often practised towards the said Indians, in contracts made for their lands, have, in divers instances, been productive of dangerous discontents and animosities: Be it ordained, that no purchases or contracts for the sale of lands made since the 14th day of October, in the year of our Lord one thousand seven hundred and seventy-five, or which may hereafter be made with or of the said Indians, within the limits of this state, shall be binding on the said Indians, or deemed valid, unless made under the authority and with the consent of the legislature of this state.

Purchases of lands from the Indians.

XXXVIII. *And whereas* we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind: this convention doth further, in the name and by the authority of the good people of this state, ordain, determine, and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever hereafter be allowed within this state to all mankind: *Provided,* that the liberty of conscience hereby granted shall not be

Free exercise of religion.

so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

No ministe or priest to hold any office.

XXXIX. *And whereas* the ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function; therefore, no minister of the gospel, or priest of any denomination whatsoever, shall, at any time hereafter, under any pretence or description whatever, be eligible to or capable of holding, any civil or military office or place within this state.

Militia.

XL. *And whereas* it is of the utmost importance to the safety of every state, that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society, to be prepared and willing to defend it; this convention, therefore, in the name, and by the authority of the good people of this state, DOTH ORDAIN, DETERMINE AND DECLARE, That the militia of this state, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service. That all such of the inhabitants of this state (being of the people called Quakers) as from scruples of conscience, may be averse to the bearing of arms, be therefrom excused by the legislature, and do pay to the state such sums of money, in lieu of their personal service, as the same may, in the judgment of the legislature, be worth: And that a proper magazine of warlike stores proportionate to the number of inhabitants, be, forever hereafter, at the expense of this state, and by acts of the legislature, established, maintained, and continued, in every county in this state.

Magazines.

XLI. And this convention doth further ORDAIN, DETERMINE AND DECLARE, in the name, and by the authority of the good people of this state, that trial by jury, in all cases, in which it hath heretofore been used in the colony of New-York, shall be established, and remain inviolate forever: And that no acts of attainder shall be passed by the legislature of this state, for crimes other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood. And further, that the legislature of this state shall, at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law.

Trial by jury.

New courts.

XLII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That it shall be in the discretion of the legislature to naturalize all such persons, and in such manner, as they shall think proper; provided all such of the persons so to be by them naturalized, as being born in parts beyond sea, and out of the United States of America, shall come to settle in, and become subjects of this state, shall take an oath of allegiance to this state, and abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate, and state, in all matters, ecclesiastical as well as civil.

Naturalization.

By order:

LEONARD GANSEVOORT, *Pres. pro tem.*

AMENDMENTS.

In Convention of the Delegates of the State of New-York.

ALBANY, OCTOBER 27, 1801.

Preamble.

WHEREAS the legislature of this state, by their act passed the sixth day of April last, did propose to the citizens of this state to elect by ballot delegates to meet in convention, "for the purpose of "considering the parts of the constitution of this state, respecting "the number of senators and members of assembly in this state, "and with power to reduce and limit the number of them as the said

"convention might deem proper; and also for the purpose of con-
" sidering and determining the true construction of the twenty-third
" article of the constitution of this state relative to the right of no-
" mination to office."

And whereas the people of this state have elected the members of this convention for the purpose above expressed; and this convention having maturely considered the subject thus submitted to their determination, do, in the name and by the authority of the people of this state, ORDAIN, DETERMINE AND DECLARE:

Members of Assembly to be 100 and never to exceed 150.

I. That the number of the members of the assembly hereafter to be elected, shall be one hundred, and shall never exceed one hundred and fifty.

To be apportioned by the Legislature.

II. That the legislature at their next session, shall apportion the said one hundred members of the assembly among the several counties of this state, as nearly as may be, according to the number of electors which shall be found to be in each county by the census directed to be taken in the present year.

Number of Senators reduced to 32, and the manner of reducing.

III. That from the first Monday in July next, the number of the senators shall be permanently thirty-two, and that the present number of senators shall be reduced to thirty-two in the following manner, that is to say:—The seats of the eleven senators composing the first class, whose time of service will expire on the first Monday in July next, shall not be filled up: and out of the second class the seats of one senator from the middle district, and of one senator from the southern district, shall be vacated by the senators of those districts belonging to that class, casting lots among themselves; out of the third class the seats of two senators from the middle district, and of one senator from the eastern district, shall be vacated in the same manner; out of the fourth class the seats of one senator from the middle district, of one senator from the eastern district, and of one senator from the western district, shall be vacated in the same manner; and if any of the said classes shall neglect to cast lots, the senate shall in such case proceed to cast lots for such class or classes so neglecting. And that eight senators shall be chosen at the next election in such districts as the legislature shall direct, for the purpose of apportioning the whole number of senators amongst the four great districts of this state, as nearly as may be, according to the number of electors qualified to vote for senators, which shall be found to be in each of the said districts by the census above mentioned; which eight senators so to be chosen shall form the first class.

Mode of increasing the Assembly till it arrive to 150 and the Legislature to apportion Senators and Assemblymen.

IV. That from the first Monday in July next, and on the return of every census thereafter, the number of the assembly shall be increased at the rate of two members for every year, until the whole number shall amount to one hundred and fifty; and that upon the return of every such census, the legislature shall apportion the senators and members of the assembly amongst the great districts and counties of this state, as nearly as may be, according to the number of their respective electors: *Provided,* That the legislature shall not be prohibited by any thing herein contained, from allowing one member of assembly to each county, heretofore erected within this state.

True construction of 23d article of constitution declared as to the council of appointment.

V. And this convention do further, in the name and by the authority of the people of this state, ORDAIN, DETERMINE AND DECLARE, That by the true construction of the twenty-third article of the constitution of this state, the right to nominate all officers other than those who by the constitution are directed to be otherwise appointed, is vested concurrently in the person administering the government of this state for the time being, and in each of the members of the council of appointment.

By order, A. BURR, *President of the Convention, and Delegate from Orange County.*

Attest,

JAMES VAN INGEN, } *Secretaries.*
JOSEPH CONSTANT, }

AN ACT

Recommending a Convention of the People of this State.

Passed March 13, 1821.

Duty of inspectors.

I. BE *it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the inspectors at each poll, in the several towns and wards of this state, at the annual election, to be held on the last Tuesday in April next, shall provide a proper box, to receive the ballots of the citizens of this state, in relation to the convention herein after provided for. On which ballots shall be written or printed, by those voters who are in favour of the proposed convention, the word *Convention,* and by those voters who are opposed thereto, the words *No Convention,* and that all free male citizens of this state, of the age of twenty-one years or upwards, who shall possess a freehold within this state, or who shall have been actually rated, and paid taxes to this state, or who shall have been actually enrolled in the militia of this state, or in a legal volunteer or uniform corps, and shall have served therein, either as an officer or private; or who shall have been, or now are by law exempt from taxation, or militia duty; or who shall have been assessed to work on the public roads and highways, and shall have worked thereon, or shall have paid a commutation therefor, according to law; shall be allowed, during the three days of such election, to vote by ballot as aforesaid, in the town or ward in which they shall actually reside.

Persons entitled to vote.

Challenges.

II. *And be it further enacted,* That it shall be lawful for either of the inspectors of such election, of his own accord, and it shall be the duty of such inspectors, when thereto required by any citizen entitled to vote as aforesaid, to administer to any person offering to ballot as aforesaid, the following oath or affirmation: "I ———, do solemnly swear or affirm, (as the case may be,) that I am a natural born, or naturalized citizen of the state of New-York, or of one of the United States, (as the case may be,) of the age of twenty-one years, or upwards: that I am the owner of a freehold within this state; or that I have been actually rated and paid taxes to this state; or that I actually have been enrolled, and have served in the militia of this state, or in a legal volunteer or uniform corps, either as an officer or private; or that I have been or now am by law exempt from taxation or militia duty; or that I have been actually assessed to work on public roads and highways, and have worked thereon, or have paid a commutation therefor, according to law: and that I now am an actual resident and inhabitant of the town or ward in which I offer my ballot; and that I have not before voted and will not again vote at this election." And it is hereby declared, that if any person, so being required to take the said oath or affirmation, shall refuse to take the same, he shall not be allowed to vote at such election, until he shall take such oath or affirmation.

Oath.

Election how conducted.

III. *And be it further enacted,* That the said election shall, in all respects, be conducted, and the poll lists shall be kept, in the manner prescribed by law, for the election of senators; that the said votes shall be canvassed by the inspectors of the several polls of the said election, and the returns thereof made by such inspectors, to the clerks of the respective towns and counties, at the same time, and in the same manner, as the canvass and return of votes for senators are by law directed to be made; that the certificates of the returns of the said votes, shall be recorded by the clerks of the several towns and counties, and transcripts thereof shall be certified, and be transmitted to the secretary of this state, at the same time and in the same manner, as certificates of the votes for senators, are now by law required to be recorded, transcribed, and transmitted to the secretary of this state; that the said transcripts received by the secretary of this state as aforesaid, shall remain in his office of record, and the

votes so given, shall be canvassed at the same time, by the same persons, and in the same manner, and the result thereof shall be published as is prescribed by law, in relation to the election of senators.

IV. *And be it further enacted,* That if it shall appear by the said canvass, to be made as aforesaid, that a majority of the ballots or votes; given in, and returned as aforesaid, are for *No Convention,* then and in such case, the canvassers are hereby required to certify and declare that there shall be no further proceedings under this act, in relation to the calling of a convention. But that if it shall appear by the said canvass, that a majority of the ballots or votes are for a *Convention,* that then and in such case, the canvassers shall certify and declare, that a convention will be called accordingly, and that a copy of the said certificate shall be transmitted by the secretary of this state, to the sheriffs of the respective cities and counties of this state, and shall be by them published, and copies delivered to the supervisors of the several towns, within the respective counties, in the same manner as notices for the election of senators are now by law required to be published and delivered.

Duty of canvassers, And of the secretary.

V. *And be it further enacted,* That in case the said canvassers shall certify and declare a majority of such ballots or votes to be for a *Convention,* it shall and may be lawful, and it is hereby recommended to the citizens of this state, on the third Tuesday of June next, to elect by ballot, delegates to meet in convention, for the purpose of considering the constitution of this state, and making such alterations in the same as they may deem proper; and to provide the manner of making future amendments thereto.

Delegates when and how chosen.

VI. *And be it further enacted,* That the number of delegates to be chosen, shall be the same as the number of members of assembly, from the respective cities and counties of this state; and that the same qualifications for voters shall be required on the election for delegates, as is prescribed in the first section of this act, and none other; and that the oath prescribed in the second section of this act, shall be likewise taken by all the voters under this section, if required; and that all persons entitled to vote by this law for delegates, shall be eligible to be elected; and that the election for such delegates shall be held at such places as the inspectors herein after mentioned, shall for that purpose notify, and shall take place on the said third Tuesday of June next, and shall continue and be held on that day, and on the two succeeding days; and that the officers in the several towns or wards in this state, authorised to act as inspectors of elections for members of assembly, and the persons who shall be appointed in the several cities of this state for that purpose, shall be the inspectors of the said election for delegates; and that the inspectors of each poll shall provide a box to receive the ballots for delegates, and shall appoint two clerks, each of whom shall keep a poll list of the electors for delegates; and that during the said election the said boxes and poll lists shall be disposed of, and kept in the manner prescribed in the "act for regulating elections;" and that the election shall be conducted by the inspectors thereof, with the like powers, and in all respects not herein otherwise provided for, as near as may be, in the manner prescribed by law, in cases of elections for members of assembly, except that none of the oaths therein mentioned, shall be administered to any elector, and that at the final close of the poll, the ballots for delegates shall be canvassed, and disposed of, and the names of the persons voted for as delegates, and the number of votes given for each person respectively, shall be certified, and the certificates thereof filed and returned, in the manner and at the times now directed by law, respecting votes for members of assembly; and that the clerks of the respective towns and counties of this state, shall enter of record the said certificates, in books to be provided by them for that purpose; and that the clerks of the respective counties shall thereupon, and within ten days after

Number of delegates. Who are eligible. When and how to be chosen. Duty of county clerks.

such certificates shall be returned as aforesaid, calculate and ascertain the whole number of votes given for the respective candidates, voted for as delegates for such county; and shall determine, conformably to the said certificates of the said inspectors, upon the person or persons duly elected by the greatest number of votes as delegates for such county; which determination shall be entered of record, in the office of such clerk, and such clerk shall cause a certificate of such election to be given to each person so found to be elected as a delegate, within fifteen days after such determination; and shall also transmit a copy of such determination to the office of the secretary of this state, there to be filed and remain of record; and that the inspectors of the said election, or the major part of them, shall give the like notice of the time and place where such election for delegates is to be held, as is directed by law to be given of the time and place of choosing members of assembly; and that the inspectors and clerks of the said election, shall severally take the oath directed to be taken by the inspectors and clerks of elections, in and by the act entitled, "An act for regulating elections," which oath, either of the said inspectors is hereby authorized to administer; and that it shall be the duty of the proper authority of the several cities in this state, to appoint inspectors of election under this act, in the same manner as they are required by law for annual elections, at least twelve days before the time appointed for holding the election authorized by this act.

Penalties for neglect and false returns, &c.

VII. *And be it further enacted*, That if any inspector of the said elections, or either of them, shall wilfully omit or neglect to make returns of the said election, within the times prescribed as aforesaid, or shall wilfully make any false return, or shall wilfully make or cause to be made, any error in such returns or either of them, and if any clerk of any county shall wilfully certify falsely, the result of either of the said elections, or shall wilfully make or cause to be made, any error in any transcript to be made by him as aforesaid, or shall wilfully neglect or omit to transmit the said transcripts, within the times aforesaid, such inspector or clerk, so offending, shall be liable to indictment and conviction for a misdemeanor, in any court of competent jurisdiction; and upon such conviction, shall be subject to a fine not exceeding one thousand dollars, or to imprisonment in the county prison, not exceeding one year; and shall be disabled to hold any office of honour, trust, or profit, under the authority of this state: And the said inspectors and clerks of elections, clerks of counties, and canvassers, shall be liable, for any other mal and corrupt conduct in relation to the said elections, or either of them, to the penalties prescribed in similar cases, in and by the "act for regulating elections," and the said officers shall be paid for their services at the said elections, or either of them, performed under this act, to the same amount, and in like manner, as they are now directed to be paid by law, for similar services at elections for senators or members of assembly.

Convention when to meet and compensation, &c.

VIII. *And be it further enacted*, That the delegates so to be chosen, shall meet in convention at the capitol, in the city of Albany, on the last Tuesday of August next, from whence they may, if they think proper, adjourn to any other place; and they, and their attendants and officers, shall be allowed the like compensation for their travel and attendance, as the members of the legislature are allowed by law; the amount of which shall be certified by the president of the convention, and shall be paid by the treasurer of this state, on the warrant of the comptroller: and it shall be the duty of the clerks of the senate and assembly, to attend the said convention, on the opening thereof, and they, and the secretary of this state, shall furnish the said convention with such papers in their possession, as the said convention may deem necessary; and the secretaries of the convention shall and may provide stationary for the use thereof, the amount of which shall be paid on the certificate of the president thereof, in like manner as the contingent expenses of the assembly are now paid by law.

Duty of the secretary of state.

IX. *And be it further enacted,* That the proceedings of the said convention, shall be filed in the office of the secretary of this state, and the determination and propositions of the said convention shall be entered of record in the same office. And that it shall be the duty of the said convention, to submit their proposed amendments to the decision of the citizens of this state, entitled to vote under this act, together, or in distinct propositions, as to them shall seem expedient. And that the said convention shall prescribe the time and manner of holding an election for such purpose, and the mode of canvassing, and determining the result, and all the regulations necessary thereto. And that all sheriffs, officers, inspectors, and persons in authority within this state, shall, in respect to the said election to be prescribed by the said convention, and all regulations necessary thereto, exercise every power and authority, as in relation to annual elections; and shall be paid in like manner, and shall receive a like compensation therefor; and shall obey and conform to the prescriptions of the convention, in that behalf, under the penalty upon each and every person wilfully neglecting or refusing, of one thousand dollars for each offence, and imprisonment not exceeding one year; and for any mal or corrupt conduct in the premises, each and every such person shall be disabled to hold any office of honour, trust, or profit, under the authority of this state. And the propositions of such convention, which shall be approved by a majority of the votes at such election, shall be deemed and taken to be a part of the constitution of this state; and that the propositions which shall not be so appoved, shall be considered void and of none effect.

Proceedings when to be filed, and amendments how to be submitted, &c.

Duty of sheriffs, &c.

Penalty.

When amendments declared a part of constitution.

X. *And be it further enacted,* That all wilful and corrupt false swearing, in taking any of the oaths prescribed by this act, or at or in relation to the election to be directed by said convention, shall be deemed perjury, and shall be punished in the manner now prescribed by law, for wilful and corrupt perjury.

False swearing declared perjury.

XI. *And be it further enacted,* That it shall be the duty of the secretary of this state, forthwith to cause this act to be published in all the public newspapers printed in this state, and to cause the same to be printed and distributed to the clerks of the respective counties, by transmitting to such clerks with all convenient speed, as many copies as shall be equal to ten times the number of towns and wards in such county: and the said clerks shall immediately deliver ten copies thereof to the inspectors of election in each town of the county: and the expense of such publication, printing, and distribution, shall be paid by the treasurer, on the warrant of the comptroller.

Duty of secretary of state in publishing, &c.

AN ACT

To amend an act, entitled "An act recommending a Convention of the People of this state."

Passed April 3, 1821.

I. BE *it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the clerks of the several counties of this state shall make their returns of transcripts of certificates of election to the secretary of this state, as required by the act, entitled "An act for regulating elections," and the act hereby amended, on or before the twenty-first day of May next; and the said secretary shall, on or before the twenty-third day of the same month, in conjunction with the surveyor general, attorney-general, comptroller, and treasurer of this state, attend at the secretary's office, to be notified for that purpose by such secretary, and perform all and singular the duties required of them by the acts aforesaid, and shall within three days after such meeting, decide upon and

Duty of the county clerks and of the canvassers.

complete their proceedings, agreeable to the requirements of said acts, any thing in the act hereby amended, or the act entitled " An act regulating elections," to the contrary notwithstanding.

Duty of sec'ry of state.

II. *And be it further enacted*, That it shall be the duty of the secretary of state to transmit by express a copy of the certificate required to be transmitted by the fourth section of the act entitled " An act recommending a convention of the people of this state," passed March 13, 1821, to the sheriffs of the respective cities and counties of this state, in case it shall appear to the secretary, surveyor-general, attorney-general, comptroller, and treasurer, to be necessary to adopt that course, in order to give effect to the said act, and the expense of such express or expresses shall be paid by the treasurer, on the certificate of the secretary, and on the warrant of the comptroller.

Officers authorised to administer certain oaths to canvassers.

III. *And be it further enacted*, That any mayor, recorder, judge of any court of common pleas, clerk of any county, or any commissioner authorised to administer oaths, shall have full power and authority to qualify the canvassers of the votes given at any election, and returned to the secretary's office, for governor, lieutenant-governor, senators, members of congress, or of the votes given for or against a convention of the people of this state.

CONVENTION

OF THE

State of New-York.

ASSEMBLY CHAMBER, ALBANY,
TUESDAY, AUGUST 28, 1821.

PURSUANT to the preceding Act, recommending a Convention of the People of this State, the Delegates elect assembled at the Capitol, in the city of Albany, at 12 o'clock. At one o'clock, GEN. E. ROOT, addressed the members, and having stated the general outlines of the law, proposed that the clerk of the Senate, (who was in attendance pursuant to the provisions of the act, and who had been furnished by the Secretary of State, with a list of the members as returned to his office from the several counties,) should call the roll. This course was adopted without opposition ; and it appeared that the following gentlemen had been elected to constitute the Convention, viz :—

County of Albany.
Stephen Van Rensselaer,
James Kent,
Ambrose Spencer,
Abraham Van Vechten.

Counties of Allegany and Steuben.
Timothy Hurd,
James M'Call.

County of Broome.
Charles Pumpelly.

Counties of Cattaraugus, Erie, &c.
Augustus Porter.
Samuel Russell.

County of Cayuga.
David Brinkerhoff,
Rowland Day,
Augustus F. Ferris.

County of Chenango.
Thomas Humphrey,
Jarvis K. Pike,
Nathan Taylor.

Counties of Clinton and Franklin.
Nathan Carver.

County of Columbia.
William W. Van Ness,
Elisha Williams,
Jacob R. Van Rensselaer,
Francis Sylvester.

County of Cortland.
Samuel Nelson.

County of Delaware.
Erastus Root,
Robert Clarke.

County of Dutchess.
James Tallmadge, jr.
Peter R. Livingston,
Abraham H. Schenck,
Elisha Barlow,
Isaac Hunting.

County of Essex.
Reuben Sanford.

County of Genesee.
David Burrows,
John Z. Ross,
Elizur Webster.

County of Greene.
Jehiel Tuttle,
Alpheus Webster.

County of Herkimer.
Richard Van Horne,
Sanders Lansing,
Sherman Wooster.

County of Jefferson.
Egbert Ten Eyck,
Hiram Steele.

County of Kings.
John Lefferts.

County of Lewis.
Ela Collins.

County of Livingston.
James Rosebrugh.
County of Madison.
Barak Beckwith,
John Knowles,
Edward Rogers.
County of Monroe.
John Bowman.
County of Montgomery.
Philip Rhinelander, jr.
Howland Fish,
Jacob Hees,
William I. Dodge,
Alexander Sheldon.
County of New-York.
Nathan Sanford,
Peter Sharpe,
Peter Stagg,
Peter H. Wendover,
William Paulding, jr.
Ogden Edwards,
Jacobus Dyckman,
Henry Wheaton,
James Fairlie,
John L. Lawrence,
Jacob Radcliff.
County of Oneida.
Jonas Platt,
Henry Huntington,
Ezekiel Bacon,
Nathan Williams,
Samuel S. Breese.
County of Onondaga.
Victory Birdseye,
Parly E. Howe,
Amari Case,
Asa Eastwood.
County of Ontario.
Philetus Swift,
John Price,
Micah Brooks,
Joshua Van Fleet,
David Sutherland.
County of Orange.
John Duer,
Benjamin Woodward,
John Hallock, jun.
Peter Milikin.
County of Otsego.
Martin Van Buren,
Joseph Clyde,
David Tripp,
Ransom Hunt,
William Park.
County of Putnam.
Joel Frost.

County of Queens.
Rufus King,
Elbert H. Jones,
Nathaniel Seaman.
County of Rensselaer.
James L. Hogeboom,
John W. Woods,
David Buel, jun.
John Reeve,
Jirah Baker.
County of Richmond.
Daniel D. Tompkins.
County of Rockland.
Samuel G. Verbryck.
County of Saratoga.
Salmon Child,
John Cramer,
Samuel Young,
Jeremy Rockwell.
County of Schenectady.
John Sanders,
Henry Yates, jun.
County of Schoharie.
Jacob Sutherland,
Olney Briggs,
Asa Starkweather.
County of Seneca.
Robert S. Rose,
Jonas Seeley.
County of St. Lawrence.
Jason Fenton.
County of Suffolk.
Ebenezer Sage,
Usher H. Moore,
Joshua Smith.
County of Tioga.
Matthew Carpenter.
County of Tompkins.
Richard Smith,
Richard Townley.
Counties of Ulster and Sullivan.
Henry Jansen,
James Hunter,
Jonathan Dubois,
Daniel Clark.
Counties of Washington and Warren.
Nathaniel Pitcher,
Melancton Wheeler,
Alexander Livingston,
William Townsend,
John Richards.
County of Westchester.
Peter A. Jay,
Jonathan Ward,
Peter Jay Munro.

Gen. Root thereupon moved that the Convention proceed to the election of a President, and that two persons be appointed as Tellers to count the votes. The motion was adopted, and Messrs. Birdseye and Sharpe were appointed Tellers.

The votes having been received and counted, were declared to stand as follows:

Daniel D. Tompkins,	94
Rufus King,	8
Stephen Van Rensselaer,	1
Ambrose Spencer,	1
Blanks,	6

Gen. Root and Chancellor Kent were then designated as a committee to conduct the President elect to the chair; which being done, he rose and addressed the Convention as follows:

Gentlemen,

"Permit me to express to you my thanks for the testimony of your confidence at the present time, in selecting me to preside over your deliberations. Be assured, gentlemen, that I fully appreciate the honour you have conferred. In accepting the trust you have reposed in me, I have only to remark, that you may rely upon the exertion of my best ability to perform it with all that fidelity and impartiality of which the circumstances will be susceptible, and with all that delicacy to your respective feelings and opinions, that is consistent with the proper regulation of this honourable body."

On motion of Mr. Root, the Convention then proceeded to the election of two Secretaries by ballot. The ballots having been received and counted, John F. Bacon, Esq. of the city of Albany, and Samuel S. Gardner, Esq. of the city of New-York, were declared to be duly elected.

On motion of Mr. Fairlie, it was ordered, that a committee of five be appointed to prepare rules and regulations for the government of the proceedings of the Convention. Messrs. Fairlie, Spencer, (Chief Justice) Sharpe, Munro, and N. Williams, were appointed said committee.

On motion of Gen. Root, the Convention next proceeded to the choice of a Sergeant at Arms. The votes being taken and counted, Henry Fryer, was declared to be elected.

On motion of Gen. S. Van Rensselaer, the Secretaries were directed to wait on the clergy of this city, and procure one of them on each morning, to open the sittings of the Convention with prayer.

And then the Convention adjourned until to-morrow morning at 11 o'clock.

WEDNESDAY, AUGUST 29, 1821.

Prayer by the Rev. Dr. Chester. The President took the chair at 11 o'clock, and the minutes of yesterday were read and approved.

Mr. Fairlie from the committee appointed yesterday to prepare rules and regulations for the government of the proceedings of the Convention, reported in part.

Chief Justice Spencer moved that the report be read and considered by paragraphs. Adopted.

By the first rule, as reported, it was provided that after calling the Convention to order in the morning, "*the names of the members be called.*"

Col. Young moved to strike out these words, upon the ground that it was unnecessary, and would occupy considerable time. After a few remarks from the mover, the Chief Justice, Mr. Van Buren, and Gen. Root, the motion was adopted.

Some discussion arose upon the 18th rule as reported, which prohibited any member from speaking more than twice upon any question, when in committee of the whole. A few brief remarks were made by Col. Young, the Chief Justice, Gen. Tallmadge, Gen. Root, and Messrs. Van Buren and Fairlie; and it was agreed to make an exception in the 20th rule, so as to allow an unlimited freedom of debate in committee of the whole. Some other trifling amendments were made, and the report of the committee was adopted as follows:

RULES.

1. Upon the appearance of a quorum, the President shall take the chair, and the Convention shall be called to order.

2. The minutes of the preceding day shall then be read, at which time, mistakes, if any, shall be corrected.

3. The President shall preserve order and decorum, and shall decide questions of order, subject to an appeal to the Convention ; he shall have the right to nominate any member to perform the duties of the chair ; but such substitution shall not extend beyond an adjournment.

4. All motions and addresses shall be made to the President—the member rising from his seat.

5. No motion shall be debated or put, unless the same shall be seconded ;—when a motion is seconded, it shall be stated by the President, before debate ; and every motion shall be reduced to writing, on the request of the President, or any member.

6. On any questions taken, the yeas and nays shall be entered, if requested by ten members.

7. If two or more members shall rise at once, the President shall name the member who is first to speak.

8. That no interruption shall be suffered while a member is speaking, but by a call to order, by the President, or by a member, through the President, when the member called to order shall immediately sit down, until permitted by the President to proceed.

9. While the President is putting the question, no member shall walk out of, or across the house, nor when a member is speaking, shall any member be engaged in conversation, or pass between him and the chair.

10. That no member be referred to by name in any debate.

11. That any member, making a motion, may withdraw it before the question is put thereon, and before amendment made—after which any other member may renew the same motion.

12. All committees shall be nominated by the President, and agreed to by the Convention, unless otherwise ordered by the Convention.

13. That none be admitted within the bar, without permission of the President, except the members of the Convention, and its attendants, the Governor, Lieutenant-Governor, Judges of the Supreme Court, the late Chancellor, the Attorney-General, Comptroller, Treasurer, Secretary, and Surveyor-General.

14. The previous question shall be always in order, and, until decided, shall preclude all amendment and debate of the main question, and shall be in this form, "*shall the main question be now put ?*"

15. All questions shall be put in the order they are moved, except in cases of amendment and filling up blanks, when the amendment last proposed, the highest number and longest time shall be first put.

16. A motion to adjourn shall be always in order, and shall be decided without debate.

17. In forming committees of the whole, the President, before he leaves the chair, shall appoint a chairman.

18. No member shall speak more than twice to the same question, without leave, nor more than once until every member choosing to speak shall have spoken.

19. No motion for reconsideration shall be in order, unless on the same day, or day following that on which the decision proposed to be re-considered took place, nor unless one of the majority shall move such reconsideration : A motion for reconsideration being put, and lost, shall not be renewed, nor shall any subject be a second time reconsidered without the consent of the Convention.

20. The preceding rules shall be observed in a committee of the whole, so far as they are applicable, except that part of the 18th rule, which restricts members from speaking more than twice upon the same question.

21. The President may admit such and as many Stenographers within the bar of the house as he may deem proper.

[Pursuant to the last mentioned rule, the President assigned seats within the bar, to WILLIAM L. STONE, NATHANIEL H. CARTER, M. T. C. GOULD, LEVI H. CLARKE, and MOSES I. CANTINE, as Stenographers.]

Mr. LIVINGSTON offered a resolution directing the Secretaries of the Convention to employ Messrs. Cantine and Leake, editors of the Albany Argus, to execute the printing for the Convention.

GEN. TALLMADGE moved to strike out the words "*Editors of the Albany Argus*," and insert "*Printers to the State.*" Carried.

On motion of MR. SHARPE, two hundred copies of the Rules and Orders were ordered to be printed.

GEN. ROOT then offered a resolution appointing Henry Bates, door-keeper to the Convention. Some desultory remarks were made upon the manner in which the choice should be made, whether by resolution or by ballot; and also upon the number of door-keepers and assistants that would be wanted. A motion by Mr. Lansing, that the Convention proceed to elect their door-keepers by ballot, finally prevailed. A ballot was therefore taken, and on being counted, Henry Bates, John Bryan, and Richard Ten Broeck, were declared to be elected.

On motion of MR. FAIRLIE, Lewis Le Couteulx was appointed an additional sergeant at arms.

Mr. SANFORD moved that the usual number of copies of the Constitution of this state, be printed for the use of the members. Adopted.

On motion of GEN. TALLMADGE, five hundred copies of the Journals of the Convention, were ordered to be printed.

On motion of MR. SHARPE, 11 o'clock, A. M. was fixed upon as the hour of meeting, until otherwise directed.

The Convention then adjourned.

THURSDAY, AUGUST 30, 1821.

Prayer by the Rev. Dr. CUMMING. The Convention was called to order by the President at the appointed hour, and the journal of yesterday was read, and approved.

On motion of MR. VAN VECHTEN,

Resolved, That the privileges of admission within the Bar of this Convention be extended to the former Governors, and Justices of the Supreme Court of Judicature, of this State.

MR. KING rose, and remarked, that it was highly important to proceed correctly and judiciously in the outset of the business of this Convention. Various plans had been suggested for making such amendments as the existing constitution was supposed to require.

In the formation of new constitutions, it had been usual to refer the whole subject to a special committee. But in the revision of existing constitutions, different methods had been adopted.

In some cases, as in the recent instance of Massachusetts, a catalogue of amendments were moved by one individual, and referred by the Convention to several select committees. In others, the whole subject had been referred to one committee. In other instances, different individuals have offered distinct propositions relative to different branches of the subject, which have obtained a similar reference.

The magnitude of an entire proposition might be appalling to a single individual, and, perhaps, excite personal prejudices; and, on the other hand, distinct propositions from different individuals are liable to incongruities and collisions, in the opinions of those who are called to act upon them. Moreover, premature discussions may, in this way, take place, that may commit men at too early a stage of the business.

In this view of the subject, it seems to be expedient to take such a course as will preserve the greatest possible harmony and good feeling: and for this pur-

pose, the business should be brought up in such a manner as is best calculated to divest it of every thing like personal character, or particular and personal views.

It was, therefore, his intention to propose, that a committee be appointed for the purpose of devising the manner in which it was expedient to take up the business of the Convention. Not that the committee should report amendments, but that they should point out such parts of the constitution, as, in their opinion, require amendment and alteration ; in order that these subjects, thus brought before the Convention, for their consideration, might be classified and referred to different select committees, to examine and report in what manner, and to what extent, such alterations shall be made ; such reports to be subject to the alterations and amendments which the Convention may make.

In this way, Mr. King believed that nothing of a personal character would intervene to disturb the harmony and good temper of the Convention ; that no gentleman would feel compromised by preconceived or premature opinions, nor subject to prejudice, in favour or against, any of those important matters that would thus come before them. Emanating from a numerous committee, they would not be likely to excite jealousies, nor to meet personal opposition : but would, in his opinion, lead the Convention to such a calm, temperate and wise deliberation upon the matter before them, as the nature of the subject required.

I would respectfully suggest, said Mr. King, although I fully concur in the fitness and expediency of calling this Convention ; and although I am fully of the opinion that the change of circumstances and political relations in our country have imperiously required the interposition of the people to revise the constitution that governs them ; my hope, that the Convention may proceed with great caution and moderation.

It is due to ourselves, it is due to our constituents, and to our country, that we deliberate with a moderation and firmness that shall be decisive, both in its character and in its purpose ; that shall inspire our constituents with confidence in the prudence of this body, and prepare the public mind for the impartial examination of the amendments which may be proposed. In this country, no man doubts, no one fears, that the great principles of liberty which lie at the foundation of our free Constitutions, are insufficient for the preservation of our freedom.

These considerations forcibly urge the observance of moderation, of mutual confidence, and the most exemplary prudence in our proceedings.

But these great principles of free government, which arise from, and can only be sustained by, the intelligence and virtue of the people, are not only denied by the great nations of the old world, but a contrary and most slavish doctrine is proclaimed and enforced by them—a doctrine which falsely assumes, that a select portion of mankind only are set apart by Providence, and made solely responsible for the government of mankind.

In contradiction to this theory, it is our bounden duty to make it manifest to all men, that a free people are capable of self-government ; that they can make, and abate, and remake their constitution ; and, at all times, that our public liberties, when impaired, may be renovated, without destroying those securities which education and manners, our laws and constitutions have provided.

Mr. King thereupon moved,

That a committee be appointed to consider and report the manner in which it will be expedient to take up the business of this Convention.

The question being put, it was carried *unanimously.*

Mr. Fairlie moved that the committee be appointed by ballot, and the president assented to the propriety of taking this course, as he had not a list of the members before him, with the counties from whence they came.

Mr. King moved that the Convention adjourn, as the choice of the committee should not be made hastily.

Mr. Fairlie had no idea of going into the choice of a committee now. If his motion to appoint the committee by ballot should prevail, he should wish the choice might be made to-morrow morning.

Mr. Sharpe, thought the Convention should adjourn. No gentleman, not even the President, could, at the moment, and without reflection, select thirteen suitable men for this important committee.

Gen. Root hoped the gentleman from Queens (Mr. King) would withdraw his motion for an adjournment, until the question should be settled as to the manner in which this committee is to be appointed. He wished the question to be taken on the motion of the gentleman from New-York (Mr. Fairlie) and trusted that it would be rejected. It would be difficult, if not impossible, if the committee were chosen by ballot, to have them properly distributed through the state. The scattering votes might occasion the election, for instance, of four or five from the city of New-York.

Mr. King withdrew his motion for adjournment; and the question was taken on Mr. Fairlie's motion, which was negatived.

Mr. Young spoke in favour of reconsidering the resolution appointing a committee of thirteen. He presumed that such a committee was intended merely to designate the heads of the proposed amendments to the constitution. After that committee have reported, their report will be before the Convention. We shall have to deliberate upon it, and adopt, amend, or reject it. While this committee of thirteen are engaged in digesting their report, the Convention will have nothing to do. He would therefore propose a reconsideration of the proceedings in relation to this subject. He thought that such a loss of time might be saved by referring the constitution at once to a committee of the whole.

Mr. King opposed the motion, on the ground that it would defeat the very object of the resolution that had just been passed. The object of the motion, which he had had the honour of submitting to the Convention, was, to take away from such propositions as might be made, all imputations of personal character; and that the measures proposed might appear to be, as he trusted they would be, the measures of the house.

Gen. Root. I hope, sir, the motion of the honourable gentleman from Saratoga (Mr. Young) will prevail; and that the constitution will be referred to a committee of the whole. The object, I presume, in making the committee so numerous, was to embrace within it as much wisdom and experience as possible; there would doubtless be accumulated a greater mass of wisdom in a committee of thirteen, than in an ordinary committee of six or seven; but it would be an ill compliment to suppose, that an equal mass of wisdom would be found even in a committee of thirteen, as in this whole body. I have objections to this committee being instructed to point out what parts of the constitution need amendment. If the committee should be so fortunate, as to agree on the subjects of amendment, their recommendations would then be submitted to the Convention, and the members would in some measure be tramelled by the report. Unavailing would be the efforts of any gentleman to resist such an accumulated force. Sir, it would be delegating to thirteen members the power of pointing out what parts of the constitution want amending. But if the constitution be referred to a committee of the whole, each member may have a proposition to make in the same manner as a committee of thirteen. Each one takes it up, and it is subsequently discussed and acted upon by all; and if this should be done with deliberation, much time may be saved in our future discussions.

Should propositions thus submitted pass in committee of the whole, any gentleman would think it unavailing to move an amendment. In my judgment, therefore, the true course will be, to refer the constitution to a committee of the whole. In that way resolutions may be offered by any gentleman, in favour of such amendments, as he may deem proper. If such propositions should be crude and indigested, they might then be referred to select committees.

Again: This committee of thirteen might find it difficult to agree among themselves, as to what should, and what should not, be reported, as subjects for amendment. And what are the other members to be about all this time? Peradventure, a week might be spent by this committee, before they would be ready, with all their industry, to submit the result of their labours to the Convention; and in the mean time those who are not on this committee will have nothing to do.

We can all be engaged in committee of the whole, and all profit by the wise suggestions made by gentlemen in favour of their respective propositions. But whilst the thirteen are deliberating, we lose our time, and all the wise suggestions which might be made, by the individual members of the committee; and in my judgment, it would be throwing away our time very unprofitably; as the report of the committee will not express the sentiments of this Convention. It will be merely an expression of the will of a majority of thirteen, which will probably be seven gentlemen; and these are to govern this whole Convention. Unquestionably, the honourable member, who moved that this committee be appointed, will be one of that number; then, if he and six others should agree on the propositions to be submitted to the Convention for their consideration, I should consider my humble efforts exerted in vain, to resist such a force: I should shrink from the undertaking. I believe that the honorable member from Saratoga moved that the business allotted to this committee of thirteen, be submitted to a committee of the whole. I hope the former resolution may be reconsidered and amended agreeably to his proposition.

The motion to reconsider was lost; and the Convention adjourned.

FRIDAY, AUGUST 31, 1821.

The Convention was called to order at 11 o'clock. Prayer by the Rev. Mr. Lacey. Minutes read and approved.

The President announced the committee of thirteen, as directed by the resolution of Mr. King, adopted yesterday. They are as follows:

Mr. King, of the county of Queens.
Mr. Sanford, of the county of New-York.
Mr. Tallmadge, of the county of Dutchess.
Mr. Root, of the county of Delaware.
Mr. Kent, of the county of Albany.
Mr. Pitcher, of the counties of Washington and Warren,
Mr. Sheldon, of the county of Montgomery.
Mr. N. Williams, of the county of Oneida.
Mr. Yates, of the county of Schenectady.
Mr. Birdseye, of the county of Onondago.
Mr. Nelson, of the county of Cortland.
Mr. Swift, of the county of Ontario.
Mr. Russell, of the county of Niagara.

Mr. Wheeler moved an adjournment till 3 o'clock. The committee will probably, be ready to make some report this afternoon.

Mr. Young thought the committee would be able to report in an hour. Their duty was only to report distinct propositions. He thought they had better adjourn till 12 o'clock, and moved to amend the motion of Mr. Wheeler accordingly.

Mr. Root. Do the gentlemen think that this committee of thirteen members, no two of whom, probably, have ever spoken together upon the subjects to come before them, will be able to report in an hour? I think not. The Convention had better adjourn till 4 o'clock—after dinner. Moved accordingly; and carried. Adjourned.

AFTERNOON—4 *O'CLOCK.*

The President having taken the chair,

Mr. King, from the committee appointed to consider and report in what manner it would be expedient to take up the business of this Convention, presented the following resolutions:

1st. *Resolved,* That so much of the constitution as relates to the *legislative department,* be referred to a committee to take into consideration the expediency of making any, and if any, what alterations therein, and to report such amendments as they may deem expedient.

2d. *Resolved,* That so much of the constitution as relates to the *executive department,* be referred to a committee to take into consideration the expediency of making any, and if any, what alterations and amendments therein, and to report such amendments as they may deem expedient.

3d. *Resolved,* That so much of the constitution as relates to the *judicial department,* be referred to a committee to take into consideration the expediency of making any, and if any, what alterations or amendments therein, and to report such amendments as they may deem expedient.

4th. *Resolved,* That so much of the constitution as relates to the *council of revision,* be referred to a committee to take into consideration the expediency of making any, and if any, what alterations or amendments therein, and to report such amendments as they may deem expedient.

5th. *Resolved,* That so much of the constitution *as relates to the power of appointment to office, and the tenure thereof,* be referred to a committee to take into consideration the expediency of making any, and if any, what alterations or amendments therein, and to report such amendments as they may deem expedient.

6th. *Resolved,* That so much of the constitution *as relates to the right of suffrage and qualifications of persons to be elected,* be referred to a committee to take into consideration the expediency of making any, and if any, what alterations or amendments therein, and to report such amendments as they may deem expedient.

7th. *Resolved,* That so much of the constitution *as relates to the rights and privileges of the citizens and members of this state, together with the act entitled an act concerning the rights of the citizens of this state,* be referred to a committee to take into consideration the expediency of making any, and if any, what alterations and amendments therein, and to report such amendments as they may deem expedient.

8th. *Resolved,* That all the parts of the constitution not embraced in the preceding resolutions, be referred to a committee to take into consideration the expediency of making any, and if any, what alterations or further provisions therein, and to report such amendments as they may deem expedient.

9th. *Resolved,* That a committee be appointed to enquire into the expediency of establishing the commencement of the legislative year; also, whether any, and if any, what alterations ought to be made in the term for which any elective officer may be elected.

10th. *Resolved,* That it be referred to a committee to take into consideration the expediency of making any, and if any, what provisions for future alterations or amendments to the constitution of this state, and to report such amendments as they may deem expedient.

The resolutions having been read, Mr. Root moved that the question be taken on the whole at once.

Chief Justice Spencer moved that they be read, and the question taken upon them separately; which course was adopted, and the resolutions all passed in the affirmative.

Gen. Root moved that the several committees consist of seven members. Carried.

Gen. Root submitted the following resolution.

Resolved, That the committee on the legislative department be instructed to inquire into the expediency of providing in the constitution, that no law increasing the pay of members of the legislature, shall take effect till after the expiration of the legislative year in which it shall have been passed.

Some little discussion arose upon the manner in which this resolution should be disposed of, and it was finally laid on the table till to-morrow.

The Convention then adjourned until 1 o'clock P. M. of to-morrow, in order to give the President time to make a suitable selection of members of the several committees.

SATURDAY, SEPTEMBER 1, 1821.

Prayer by the Rev. Mr. Davis. The Convention was then called to order, at 1 o'clock, and the minutes of yesterday were read and approved.

Mr. P. R. Livingston. Before you proceed, Mr. President, to execute the important trust recently imposed on you; that of selecting committees to embrace the different subjects selected for them respectively, I shall offer a resolution, the object of which will be, to augment and increase those committees. When I approach this Convention, I recognize character, wealth, talent, and patriotism. I know, sir, that I am addressing the majesty of democracy in its delegated character; and on all occasions, I shall attach to it that respect, which so dignified an assemblage of citizens will always command. I know that we are about to take into consideration a subject, which has for its aim the public good; and under the auspices of that Being, who directs and presides over the destinies of man, I trust we shall be guided to a course of action, which will have for its object, the interest, honor, happiness, and prosperity of this commonwealth. In the appointment of the committee recommended by my honorable friend from Queens, there was not much importance attached to the resolution; but filled up as these committees have been in point of numbers, there is much importance growing out of it. The Convention have now settled the mode and manner in which we are to proceed in determining the vital principles of the constitution, which are to be submitted to the consideration of this body. Is it not wise to avail ourselves of the talent and ability of this Convention, by increasing the number of these committees? By the introduction of a resolution yesterday, which confines the number of each committee to seven, you now have but seventy members engaged; fifty-six are necessarily to be unemployed until the report of some of these committees shall be presented to this Convention. It is in the chamber, where information is to be had; it is not on the floor of the Convention where talents may be opposed, and eloquence give a wrong direction. There are many men of fine minds, who do not possess floor talents; and by the course which has been adopted we shall be deprived of the benefits of their counsel, of their wisdom and prudence. Is it not better that every member be attached to some one of these committees, where others may avail themselves of his information, or where he may obtain such information as he may need?

It will not, nor can it be said, that those committees will be too numerous. I believe that in a sister state they have adopted the wisest course in submitting the constitution to a committee of the whole. You cannot compare the proceedings of this body with ordinary legislative proceedings—the latter, in ninety-nine cases out of a hundred, are local in their nature, while the former have no other boundary than the marginal limits, which terminate the jurisdiction of its power.

If this resolution shall prevail, (and there can be no other objection to it than the delay of a single day) we shall then all be employed in the business before us. No man has more regard for the most rigid economy than myself; and I would not procrastinate the proceedings of this body, or expend a single cent of the public money, beyond what is necessary. I believe, sir, the plan proposed by the resolution will not be the means of retarding our progress; but by uniting the wisdom and talents of all the members, the business of the Convention will be expedited. If the number of five be added to each of the committees, it will leave a fraction of six members, who may be disposed of as the importance of particular committees may make it necessary. I therefore, with these views, tenacious of them because impressed upon me by a regard to the public interest, to promote which we are here assembled, offer the following resolution:

Resolved, That the respective committees appointed to report on the several parts of the constitution referred to them, be augmented, and that the number of five be added to each committee.

This resolution was subsequently modified, so that six should be added to the first five committees, and five to the remaining ones, which would embrace all the members.

CHIEF JUSTICE SPENCER disapproved of the course proposed by the gentleman from Dutchess. It would cause considerable delay in the proceedings, since another day or two would be consumed in filling up the committees, and by being rendered too numerous, their proceedings would be retarded. He believed it to be unusual in legislative proceedings, to appoint an even number of members on committees, as they might be divided in opinion, and a report thereby be delayed or prevented. The committees appeared to him sufficiently numerous for all the purposes intended. If he understood the duty assigned them, it was merely to present to the Convention, in a condensed form, the subjects for deliberation, which would form topics of discussion in committee of the whole. The gentleman from Dutchess erred in supposing that these several committees would assemble together, and discuss the subjects referred to them —this would be the business of the whole Convention after the reports of the several committees were made. On the whole, he thought an increase in the number of the members composing the committees unnecessary, and therefore hoped the resolution would not be adopted.

MR. LIVINGSTON replied, that he must have been strangely misunderstood, or be very limited in his views, if he had said any thing from which it could be inferred that he supposed all the committees were to assemble together; the man who could have supposed such an absurdity, was unfit to be in this Convention. But he did suppose, and he hoped to convince the honourable gentleman who last spoke, that there would be very great advantages growing out of an increase of these committees. They are not appointed to examine subjects of an ordinary concern; but the great charter of our rights will be laid before them. Every member comes with views, correct or incorrect, of that charter; and will my honourable friend pretend to say, that there is not more wisdom in twelve than in seven? And will not these twelve by a discussion of the topics submitted to them, gain much important information, and be better qualified to act on the subject hereafter? He asked how he was to obtain his information? Suppose that honourable gentleman was chairman of a committee on the subject of the judiciary, and that he should come into committee of the whole, fortified with strong reasons, and information derived from private deliberation, he would in such case enjoy a decided advantage over others; and it would be extremely difficult for those, who did not possess floor talents, to raise this or that objection, although they might be men of sound understandings.

He would ask that honourable gentleman, how fifty or more men were to employ their time, while the committees were preparing their reports? Would it not be better that they should be associated with the several committees in their chambers, where they might be acquiring information, which would enable them to act more advisedly on the subjects, which will hereafter come before them? We cannot, it is true, be present with all the committees—would to God we could. Another objection raised is, that the committees will be an even number—that is an imaginary difficulty; it is one that will not be realized. Would any member of such a committee take it upon himself to say, that no report should be made unless such as to suit his own views? It would be made by the chairman, although others might not assent to it. He said we did not come here to exercise feelings of passion, or those feelings which would grow out of intemperate discussion.

He presumed it was the wish of every delegate to bring the subject fairly before the convention; to discuss it with moderation, and give it all that dispassionate consideration, that its importance might require, before it is submitted for the decision of that power, which created us, and to which we are answerable. Another difficulty which has been suggested is, that the President would belong to one of these committees, which he thought would be improper. He concluded with hoping, that his resolution would be well considered, before the Convention should decide on it, as he felt much solicitude that it might be adopted.

COL. YOUNG remarked, that the committees would deliberate out of the ordinary hours of sitting, and would not break in upon the regular proceedings of the Convention. He was rather disinclined to add to the number of these com-

mittees, because he thought it would produce unnecessary delay; it would take a committee of thirteen longer to agree on a report, than it would a committee of seven. The object for which these committees were appointed, was to bring before the Convention the principles which were to be discussed in committee of the whole; and when these principles shall have been submitted to the collective wisdom of all the members, they will then be moulded into such shape, as a majority can agree to. He did not think any proposition would be adopted in the exact words of these committees. The propositions reported will undergo a thorough scrutiny from each member, and receive such amendments as may be deemed adviseable. He concurred in the remarks which were made by the gentleman from Delaware, a few days since, that if the committees were too numerous, the members would in some measure feel themselves committed by their private deliberations and reports, and thus opposition would afterwards be unavailing. If the committees were to be augmented, another day would be taken up in making such additions. The committees as now constituted, would probably be able to report in the course of a few days—the one on the right of suffrage might be ready by Monday—when we can go into committee of the whole, and enter upon a discussion of the report. The other reports may be prepared in a few days, and in acting on them we shall all be occupied.

The question was then taken on the resolution, and lost.

The President thereupon named the following gentlemen to compose the several committees, viz.

On the legislative department—Messrs. King, Kent, Paulding, Sage, Rose, Ten Eyck and Lawrence.

On the executive department—Messrs. Sheldon, Wendover, Huntington, Yates, Stagg, Pitcher and Hogeboom.

On the judicial department—Messrs. Munro, N. Williams, J. Sutherland, Silvester, Wheaton, Duer and Wheeler.

On the council of revision—Messrs. Tallmadge, Platt, Ward, Nelson, Brooks, Russell and Van Horne.

On the appointing power—Messrs. Van Buren, Birdseye, Collins, Buel, Child, Edwards and Rhinelander.

On the right of suffrage—Messrs. Sanford, S. Van Rensselaer, Peter R. Livingston, Fairlie, Young, Cramer and Ross.

On the bill of rights—Messrs. Sharpe, Spencer, Hunter, I. Smith, Lefferts, M'Call and Richards.

On the parts of the constitution not embraced in the preceding resolutions—Messrs. Radcliff, Bacon, R. Clarke, Pike, Schenck, and Briggs.

On the commencement of the legislative year—Messrs. Root, Lansing, J. R. Van Rensselaer, Price, Beckwith, Rosebrugh and Burroughs.

On provision for future amendments—Messrs. Swift, Van Vechten, Barlow Steele, Tuttle, E. Williams and Verbryck.

The members of each committee were again named singly by the President, and approved by the Convention.

Mr. Fairlie remarked, that the phrase *elective franchise*, had been made use of in some of the previous proceedings. He believed the term improper, and hoped the phrase *right of suffrage* would hereafter be used in its stead.

Gen. Root then called for the consideration of the resolution (relative to the pay of members of the legislature) which he yesterday offered, and which was ordered to lie on the table.

Mr. Duer hoped the gentleman from Delaware would consent to withdraw his resolution. The committees to whom had been referred the several parts of the constitution were competent to the task assigned them, and it appeared to him obviously improper, in this stage of the business, to attempt to instruct them in their duty. He presumed the gentleman from Delaware had full confidence in the committee, to whom the subject of his resolution would be referred; and it would be better to wait till they had reported, and if the amendment which seemed to lie so near the gentleman's heart was overlooked, it might then be called up by resolution. He deprecated the precedent, which the adoption of this resolution would establish. If one member were permitted to call the attention of the Convention to a particular point, and to some favour-

ite plan of his own, other members might follow the example, and the proceedings of the Convention would thus be embarrassed and delayed by a multitude of individual propositions, some of which might not be so proper, as the one offered by the honourable gentleman from Delaware. Such a course would frustrate the objects for which committees had been appointed. If any gentleman believed that he could aid the several committees by his suggestions and instructions, he was at liberty to impart his advice. He repeated, that if gentlemen were dissatisfied with the reports of the several committees, there would then be an opportunity for offering resolutions by way of amendment. He therefore hoped the gentleman from Delaware would see the force of the reasons, which had been suggested, and consent to withdraw the resolution.

Gen. Root. The honourable gentleman from Orange, wishes me to withdraw my proposition, which may be a reasonable request; still I must be pardoned for insisting on having a distinct vote taken on the resolution, instead of being "*struck*" so forcibly with the impropriety of the course which I have undertaken to pursue. Yesterday it was premature to instruct the committee, because it was not appointed;—to day it is premature, says another gentleman, because it looks like censuring that committee. When shall we instruct them? When they shall have made their report? Yes, this will be time enough, when they have performed the duties assigned them, and made their report! then will be the time, if they have neglected this provision, to give them their instructions! Sir, while that honourable gentleman supposes that it shows a want of decorum, in calling the attention of a committee to a particular subject, he does not recur to the newspapers, which he so frequently reads, to see that it is the custom in the house of representatives of the United States, as well as in the legislature of this state. It would seem, from the gentleman's argument, that individuals are to go before these committees, and instruct them what to do: for my part, I wish that the Convention might have the privilege of telling them, rather than an individual and humble member. I wish to speak to them not only in language which they can understand, but such as they will be willing to obey. But the gentleman asks, with a great stress of interrogation, what would prevent other gentlemen from offering propositions of this kind? I answer him, nothing. I hope and trust in God, that nothing is able to prevent any gentleman, save the power of Heaven, from submitting propositions to the consideration of this Convention; and can any person elected to this Convention prevent another from offering a proposition? If so, perhaps I may be so "*struck*" with the force of the gentleman's argument, as to be willing to withdraw my proposition. It has been said that projects may be offered disgraceful to this honourable body? Where is there a gentleman who would presume to offer any thing to the consideration of this Convention which would be disreputable? Is there an individual in this august body that would descend from the dignity of his station, and make such an offer? Sir, it is suitable, and it is important, that these committees, intrusted with the several branches of the constitution, should make an entire report, when they do report, and before it shall be taken up in committee of the whole. We are informed, that it would be better to wait till these committees shall have reported, and then instruct them; and let them bring in a supplementary report. This will, in my opinion, produce greater confusion than the course which the learned and honorable gentleman so much deprecates. I believe no one will deny that this proposition is important; I consider it important, from the experience of years, and from evidence which has frequently come under my view. Just at the close of the session, when the supply bill is under consideration; and in one instance, when on a bill in relation to the commissary general, members have been found scrambling for a little additional pay; thrusting their hands into the treasury for a little money, that the people never consented they should take. Sir, I have witnessed many a disgusting scene of that kind; and now as the people are assembled in convention, I am anxious to pursue such a course, as will prevent their being acted over hereafter. Let them provide for the pay of their successors, and my word for it, it will not be enormously high; because if some of the members expected to be re-elected, they would hardly dare to vote for the highest pay, for fear the people would animadvert at the polls of the election. This would be a sufficient

guard, in my judgment, to prevent the repetition of these disgraceful scenes. [Here Mr. R. was called to order by Mr. Spencer, who was of opinion that it was not in order to enter into the merits of the proposition. The President decided that it was in order, and permitted Mr. R. to proceed.] Mr. R. proceeded to remark, that his proposition either had merits, or it had none, and he was desirous that in either case, it should be determined by the Convention; and if it did possess merits, let it be laid before the committee for their consideration; and after their report, if it should pass by a majority of the Convention, let it be engrafted into the constitution. If the members of this Convention are of opinion that it possesses merits, they will vote in the affirmative; if not, they will vote in the negative; I therefore wish that a distinct vote be taken.

Mr. J. Sutherland supported the resolution. The subject of it was important, and he could perceive no impropriety in instructing a committee on that particular point. It might be doubtful, which of the several committees should take cognizance of it; and between them, it might be overlooked and neglected by all. Gentlemen appeared to concur in the propriety of introducing such a provision into the constitution; and as it was deemed a matter of some importance, he was unable to see the indecorum of instructing a committee to attend to it. He therefore hoped the resolution might be adopted, and that the subject of it might be specially referred to the committee on the legislative department.

Mr. Duer, again rose, and spoke at some length in reply to the gentleman from Delaware. He acknowledged that great deference was due to the legislative and parliamentary experience of that honourable member; but he regretted to witness on this occasion his determination to persist in a course so obviously injudicious. For what, he asked, had ten committees been appointed, and the several parts of the constitution specially referred to them, if distinct propositions and individual views were thus to be submitted by resolution? It appeared to him to be in direct contravention of the mode of proceeding which had been agreed on. Adopt this proposition, and a multitude of other projects not ridiculous and disgraceful (for he disclaimed having used such epithets) but injudicious and inexpedient, might follow; and thus would the duties of the committees be superseded, and the business of the Convention be retarded. He had seen no reasons for altering the opinions he had already expressed, and hoped the resolution would lie on the table.

Here the President expressed some doubts whether it was parliamentary to instruct select committees by resolution; and solicited the opinion of some gentlemen on the subject.

Mr. King, believed it was strictly parliamentary to give instructions to any committee by resolution. Whatever might be thought of the expediency of the resolution, he did not doubt, but the convention was competent to give the instructions which it urged.

Gen. Root, again spoke in reply to the gentleman from Orange. The object of that honorable member appeared to be to get rid of the subject, to which the resolution referred—else what objection could he have to its adoption? The motion that it lie on the table, he considered tantamount to an indefinite postponement, or to a rejection. It would lie on the table, and be called up day after day, till it had become an old story, and that would be the last we should hear of it. He had supposed, that some members would wish for the privilege of offering resolutions, and of having them entered upon the journal, for the purpose of letting their constituents know what they were about, and whether they had faithfully complied with the mandates they had received before leaving home. He concluded with saying, that if the resolution was ordered to lie on the table, he should, if his life and health were spared, again call it up on Monday.

Mr. Edwards spoke at considerable length against the adoption of the resolution. He entertained no doubts of the competency of the convention to instruct its committees on any points; and he fully agreed to the expediency of such a provision, as the resolution proposed. But where, he asked, was the necessity of instructing the committee on this particular point, more than on any other, and to what would such a precedent lead? Other propositions

would in like manner be submitted by other individuals; and by voting for their adoption or rejection, members would in some measure commit themselves before the subjects were fairly discussed. For his part he wished to hold his judgment in reserve, to maintain a consistency of conduct, and not vote one day for an amendment, on which he might, after mature deliberation, the next day, find reasons to change his opinion. What possible good could result from pursuing such a course? Project after project would be offered, till the convention would be distracted and confused by a multiplicity of individual schemes. He was decidedly opposed to erecting any barriers to perfect freedom of discussion; but he was unable to perceive, that the rejection of this resolution would have such an effect. The debates on the reports of the committees would afford ample room for any amendments, and any new propositions. The principal argument which had been urged in favour of submitting individual views for the consideration of the Convention, appeared to be, that our constituents might know what we were doing, and that they might be satisfied their mandates were obeyed. For his part, he should content himself with a faithful and conscientious discharge of his duty; and doubted not but such a course would meet the approbation of his constituents. He said that this discussion was calculated to produce irritation of feeling which he should regret to see excited. He hoped the gentleman from Orange would withdraw his motion, that the resolution lie on the table, in order that the question might be taken on its merits.

Mr. Duer withdrew his motion, and then moved that the resolution be indefinitely postponed.

Mr. Fairlie thought it might at least be permitted to lie on the table. He could see no impropriety in granting such an indulgence. It might afford some satisfaction to have it die gradually, and be hanged with a silken cord.

Gen. Root rose again and vindicated his resolution. In the opposition to its passage, he could discover hostility to the proposition it contained. He hoped when the question was taken, it would be taken on the merits, and not on postponement. It was his misfortune not to be convinced by the cogent arguments of the gentleman from Orange, and other gentlemen who had spoken on the same side; and instead of acquiescing in their opinions, he called for the yeas and nays.

Mr. Munro spoke against the passage of the resolution, but in so low a tone of voice that all he said could not be distinctly heard by the reporter. He wished the resolution might lie on the table, till the committee on the legislative department had reported, and that it might then be called up, if the subject to which it related should be neglected in the report.

Col. Young was in favour of rejecting the resolution at once. He believed it to be wholly unnecessary in this stage of the proceedings, and he was ready to give his vote for indefinite postponement, or any other mode of getting rid of it. Its adoption would establish a bad precedent. A committee had been appointed, within whose sphere the subject of the resolution would fall; and he was decidedly opposed to any interference, till the report had been heard. There would be time enough after that, to introduce amendments.

Mr. Van Horne moved to adjourn. His object was to give the members till Monday to reflect on the subject. Motion put and lost.

It was then moved that the resolution be postponed till after the committee whom it proposed to instruct had reported.

Gen. Root said, that the motion for indefinite postponement was the same as a motion for a rejection; if the gentleman wished to have it indefinitely postponed, it must have been, because there was something hateful in it, in his view. It could not be considered in any other light. How can that honourable gentleman reconcile it to his feelings, to vote for this proposition at a future period, after having been instrumental in turning it out of doors, as unworthy of being considered one of the family of propositions submitted to this honourable body.

Sir, I regret that the honourable gentleman has not paid more attention to the course of parliamentary proceedings adopted in the congress of the United States, and in our state legislature. In the house of representatives of the Unit-

ed States, a standing committee, or a committee on any portion of the president's message, is frequently called on by resolution, directing them to turn their attention to a particular point in relation to the subject before them. Several of the gentlemen in this body have been members of the house of representatives, and I appeal to them as to the correctness of my assertions. I really have a desire, that the ayes and noes be taken, that we may see whether this proposition is to be turned out of doors, for the sake of calling it in again.

Mr. Briggs made a few remarks on the subject, and announced his intention to vote against the resolution. It was in his view wholly unnecessary, and could not be considered in any other light, than as a useless interference with the duties of the committee.

The question was then taken on postponing the resolution, until after the committee had reported, and decided in the affirmative, without a division.

Adjourned to Monday, at 11 o'clock.

MONDAY, SEPTEMBER 3, 1821.

Prayer by the Rev. Mr. Lacey. The Convention was called to order at 11 o'clock, and the minutes of Saturday read.

The President remarked, that before the vote on approving of the minutes was taken, he begged leave to rectify an error, which occurred in the proceedings of Saturday. A resolution was postponed, *till after a committee had reported.* It was contrary to parliamentary usage, to postpone to any *contingent future event*—the postponement must be either indefinite, or to some fixed time. The decision of the Convention therefore would properly have been, that the resolution lie on the table.

Mr. Sharpe remarked, that the secretaries were sometimes at a loss what motions ought to be entered on the minutes. Motions were often made, which were not acted on ; and it appeared to him unnecessary that these should be recorded. He therefore wished, that it might be considered a settled practice that no motion was to be entered on the minutes, except such as were acted on by the Convention.

After these remarks, the minutes were approved.

Gen. Tallmadge, chairman of the fourth standing committee, to whom was referred the resolution relative to the *council of revision*, asked leave to report. Before the report was read, he wished to remark, that the committee had not gone into any explanation of the reasons, which influenced them in making the report. He stated that the committee were aware, that they departed from parliamentary usage by submitting a report without accompanying it with their reasons. They had omitted to do this, because, in their opinion, the convention might be induced to adopt the amendment, for different views from those assigned by the committee. The reports of committees would remain of record, and might hereafter be used to give a false and imperfect construction to the proceedings of the Convention. The committee had therefore adopted this as the most proper course, and they hoped it would be considered by the other committees as a precedent. The report was then read by the secretary, as follows :

The committee to whom was referred so much of the constitution as relates to the council of revision, and to take into consideration the expediency of making any, and if any, what alterations and amendments therein, and report thereon ; having considered the duty assigned them, respectfully report :

That in their opinion it is expedient and proper to abolish the third article of the constitution of this state, and to introduce in place thereof the following amendment. The committee, therefore, respectfully submit to the consideration of this convention, the following resolution and amendment :

Resolved, That the third article of the constitution of this state be, and the same is hereby abolished.

AMENDMENT PROPOSED.

This convention, in the name and by the authority of the people of this state, doth ordain, determine, and declare, that every bill which shall have passed the house of assembly, and the senate, shall, before it become a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of persons voting for and against the bill, shall be entered on the journal of each house respectively.

If any bill shall not be returned by the governor within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature by their adjournment prevent its return, in which case it shall be a law, unless returned on the first day of the next meeting, after the expiration of the said ten days.

Gen. Tallmadge, moved, that the report be made the order of the day for to-morrow, and that the usual number of copies be printed for the use of the members.

Chief Justice Spencer inquired what would be considered the *usual number?* He believed no precise number had been agreed on; and if not, he moved two hundred should hereafter be considered the usual number. Carried.

Mr. Fairlie thought two hundred would not be sufficient, and moved a reconsideration of the vote, and that four hundred be considered the usual number. Lost. He then moved that three hundred be the number. Carried.

Chief Justice Spencer remarked, that in most cases he thought one day was not sufficient time for deliberation, before acting on the reports, especially as they would not be printed in season for the use of the members. In the present case, however, he had no particular objection that the report just read should be made the order of the day for to-morrow, although he would not wish to have it established as a precedent.

Gen. Tallmadge's motion was then agreed to.

Mr. Fairlie moved an adjournment. The committees would be engaged, and there would, probably, be no other business before the Convention to-day.

Col. Young wished the motion might be suspended for a moment; and moved that the journal of proceedings be printed in an octavo form, as being more convenient. Carried, and the secretary was directed to see that the order be complied with. Adjourned.

TUESDAY, SEPTEMBER 4, 1821.

Prayer by the Rev. Mr. Mayer. The President then took his seat, and the minutes of yesterday were read and approved.

Mr. Sharpe moved that the Convention resolve itself into a committee of the whole on the report of the committee relative to abolishing the Council of Revision. Mr. Root wished the motion suspended a moment, while he could present a report. To this Mr. Sharpe assented; and

Gen. Root, from the committee appointed on that part of the constitution which relates to the legislative year, asked leave to report by resolution, which was granted. The following report was then presented.

Resolved, That the following amendments ought to be made to the constitution of this state, to wit:

And be it further ordained by the people of this state, that the general election for governor, lieutenant-governor, senators and members of assembly, shall be held

at such a time in the month of October or November, as the legislature shall direct; and the persons so elected shall on the first day of January following, be entitled to the exercise of their respective functions in virtue of such election.

The governor and lieutenant-governor shall be elected annually, and the senators for three years.

The report having been read, was committed to a committee of the whole, and ordered to be printed.

GEN. TALLMADGE moved that it be made the special order of the day for to-morrow.

MR. SHARPE could see no necessity of making this report the special business of to-morrow. Perhaps we shall not get through with the subject which has been made the special order for to-day.

MR. CRAMER also opposed the motion.

MR. HOGEBOOM thought the reports from the select committees ought to be taken up in the order in which they shall be presented to the Convention.

GEN. TALLMADGE wished some regular order should be established. He wished a regular calender of the business should be made; and by taking this course, when a call for the order of the day is made, we can take it up, or not, as may be expedient.

MR. CRAMER thought that the report ought not to be made a special order, until they could have time to examine, and see the substance of it.

CHIEF JUSTICE SPENCER saw no necessity of making this report the order for to-morrow, or any other particular day, and wished that it should merely be referred to the committee of the whole, without limiting the time. There ought not to be a preference to any particular report, as in that way we shall fetter ourselves.

The motion for making the report the special order, was lost—only fourteen members rising in its favour.

MR. HOGEBOOM still hoped that the Convention would take up the business before it, in the order in which it would be presented for consideration by the respective committees, and made a motion to that effect.

MR. SHARPE was opposed to the motion. He hoped it would not be seconded. Should such a course be adopted, the convention would soon see the bad consequences resulting from it.

THE COUNCIL OF REVISION.

On motion of GEN. TALLMADGE, the Convention then resolved itself into a committee of the whole on the report of the committee presented yesterday for abolishing the third article of the constitution, (which provides for the council of revision,) and the amendment for placing a qualified veto in the hands of the governor—Mr. Huntington in the chair.

The report of the committee having been read,

CHIEF JUSTICE SPENCER called for the reading of the third article of the constitution, now proposed to be abolished, which was read accordingly in the words following:

§ 3. And whereas laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: be it ordained, that the governor for the time being, the chancellor, and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration under any pretence whatever. And that all bills which have passed the senate or assembly shall, before they become laws, be presented to the said council, for their revisal and consideration; and if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the senate or house of

assembly, in whichsoever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to reconsider the said bill. But if after such reconsideration, two thirds of the said senate, or house of assembly, 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 be a law.

Gen. Tallmadge briefly explained the views of the committee. The detail of the opinions entertained by the committee, why the council of revision ought to be abolished, was intentionally and very fortunately omitted. It was proper, however, now to communicate to this committee, that the committee of which he had the honour of being chairman, was unanimously of the opinion, that the principles of good government require that the legislative and judicial departments should be kept entirely distinct. The committee were likewise of the opinion, that a veto should be preserved; and in fixing upon the plan to be adopted they have resorted to the constitution of the United States, and copied the plain and simple language of that instrument. But in the concluding clause, the committee have preserved the spirit of that part of the third article of our constitution, which provided that bills not returned within ten days, should become laws in like manner as if they had been passed by the council of revision, or the power in which the veto is lodged. Mr. Tallmadge extended his remarks somewhat further; but he was not distinctly heard.

Mr. Jay wished to have the phraseology of the resolution prefixed to the amendment proposed by the committee, amended. It now reads—" Resolved, that the third article of the constitution of this state, be, and the same is hereby *abolished*." He presumed it was not the intention of the Convention at once to abolish the constitution: and concluded by moving to alter the resolution so as to make it read "*ought to be* abolished." This amendment was adopted.

Col. Young moved that the resolution be so amended as to read—" Resolved, that the council of revision, provided by the third article of the constitution ought to be abolished." The object of the resolution would then be distinctly understood.

Chief Justice Spencer opposed the motion, as he considered the resolution proper as it now stood.

Mr. Duer suggested a variation of the amendment, so as to make it read—Resolved, that the third article of the constitution *organizing* the council of revision, ought to be abolished."

Mr. Sharpe would submit whether the following would not read better—" Resolved, that the third aticle of the constitution ought to be amended as follows :"

Mr. Van Buren thought too much importance was attached to the phraseology of the resolution. The object of this was only to ascertain the sense of the Convention in regard to this feature of the constitution. He was of the opinion that the time of the Convention could be better occupied than in discussing the form in which the resolution should stand. He had no particular objection to the amendments proposed, but he considered them unnecessary.

Gen. Tallmadge. It is proper that this committee be informed as to the views of the select committee on this subject, which were to abolish the third article, and substitute the amendment; and they have accordingly presented it in the form of two distinct propositions—the one to abolish, and the other to amend.

Chief Justice Spencer. The object now is, merely to take the sense of the committee; to have the question distinctly stated and settled. It is not therefore worth while to be fastidious as to the form of the resolution. After the amendments are agreed upon, they will all be put into a suitable form and properly arranged, by a committee which will be appointed for that purpose.

Mr. Sharpe withdrew his amendment, and the question was taken on that proposed by Col. Young, which was negatived.

Chief Justice Spencer remarked, that the Convention had been informed by the chairman of the standing committee, upon that part of the constitution relating to the council of revision, that they were unanimously of the opinion, that the judicial and legislative departments of government ought not to be mingled or exercised in conjunction; and likewise, that they had thought proper to recommend to this Convention to abolish the third article of the constitution, as it now stands. He thought the principle a sound one, and might be extended further than it is carried in the report—that the executive, judicial, and legislative powers ought to be kept separate. We find this to be a fundamental principle in most of the constitutions of the United States; and we also find that in most instances, it has not been strictly preserved.

With regard to the proposition to abolish the council of revision, it might appear indelicate for him, situated as he was, to express his opinion on that subject; but he should throw himself upon the liberality of this body, and upon this, as on other topics, express his sentiments with the utmost freedom. He was willing that his conduct should be tested by the votes he should give on every question that might come before this body. He trusted he should never shrink from a faithful discharge of his duty; and he should never be backward to assign the reasons of his vote.

The duties enjoined by the constitution on the judiciary, as members of the council of revision, were arduous and painful; duties, from which they would gladly be relieved. The office of member of the council was an invidious one, which no judge would be anxious to perform.

When we are called on by a resolution to amend the constitution, under which we have lived almost half a century, it is incumbent on those, who offered the resolution, to explain the reasons, why such an amendment should be made. He should not go into an examination of the alteration proposed.—He thought with the committee, that it was all important there should be some check provided upon the legislative power; and he was also decided in the opinion, that this check ought to be lodged with some firm, independent, and safe depository.

The Chief Justice here adverted to the important functions of the council of revision, and read from the constitution a part of the third article, and explained the important duties assigned to this department of the government.—Facts would justify him in stating, that laws had frequently been hastily and unadvisedly made, and that the powers of the council had often been usefully exercised. In most cases, he believed, the acts of the council had met the decided approbation of the legislature, and the utility of such a revisory power had thus been acknowledged.

He was not opposed to the proposition reported by the committee, nor did he rise to speak against it—he thought the alteration necessary, and he would explain the conditions on which he would agree to it. He had already remarked, that in framing this article of the constitution, it was considered important, that this power should be deposited in independent hands. It was supposed that the governor was not alone sufficiently firm, to resist the will of the legislature. He believed this idea to be correct; and if an amendment in this part of the constitution should be adopted, he should make it an indispensable condition of giving his vote in its favour, that the revisory power be placed in the hands of a depository who was not dependent on the legislature.

The gentleman had stated, that the provision, as offered in the proposed amendment, was copied from the constitution of the United States. He did not believe the revisory power, deposited with the national executive, had ever been abused.

If instances of such abuse had occurred, they were rare, and had given rise to no serious complaints. But there was a wide difference between the executive of the United States, and the executive of this state. The President of the United States is elected for four years—the governor of this state, for only three. The federal constitution provides an annual salary for the president, and expressly states that it shall not be increased or diminished. We have no

such clause in our constitution; and the governor is left entirely dependent on the legislature for his salary.

He should therefore vote for this proposition under the express reservation, that the amendment shall be accompanied with a provision hereafter, that the governor of this state shall be placed in a situation, whereby he shall be rendered so far independent of the legislature, as not to depend on their will for his daily bread; since such a state of dependence might render him subservient to their wishes.

He was sensible that there were many forcible reasons, why the judicial should not interfere with the legislative department. It was a point which had often been urged by enlightened writers on constitutions of civil government. Without going into a consideration of these reasons, he was willing to vote for the resolution with an understanding, that such a provision as he had mentioned, should be inserted in the constitution.

Gen. Root called for the ayes and noes on the question of adopting the resolution.

Mr. Van Buren. There will be many questions which will probably pass nearly unanimously. It will therefore be proper to have the ayes and noes taken, that the names of the members may be recorded. He therefore would second the call.

Mr. Fairlie thought the amendment proposed by the committee ought first to be considered. Should that be adopted, it would then be proper to take up the resolution for abolishing the third article of the constitution. If this committee shall not agree to the amendment proposed, or any other, then we shall have abolished the third article of the constitution without having a substitute.

The question on the resolution was then taken by ayes and noes, and it was adopted, (with Mr. Jay's amendment) unanimously; 121 members being present.

The amendment proposed by the committee was then again read.

Mr. Wheeler moved that the committee rise and report.

Mr. Van Buren. If any proposition by way of amendment or substitute is to be offered, it had better be done in committee of the whole. He was not aware that any was to be offered. He hoped, however, that the committee would not rise.

Col. Young moved to amend the report of the committee, by striking out of the two last lines the words, "after the expiration of the said ten days." They were tautological. Carried.

Mr. Jay, after a few remarks, in which he stated that there was a provision of the kind in the constitution of the United States, moved to add the following by way of amendment, to the substitute for the third article proposed by the committee:

"And every order, resolution or vote, to which the concurrence of the senate and assembly may be necessary, (except on a question of adjournment) shall be presented to the governor, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the senate and house of assembly, according to the rules and limitations prescribed in the case of a bill."

Mr. Jay wished it to lie on the table for consideration.

Gen. Tallmadge suggested a verbal alteration, which was assented to by Mr. Jay.

Col. Young hoped that the proposed amendment would not be adopted, because it would embarrass the proceedings of the legislature. He stated several inconveniencies which would in his opinion result from having every joint resolution of the two branches of the legislature submitted to the executive.

Chief Justice Spencer did not believe the amendment necessary. A joint resolution is here never considered as a law. Mr. S. pointed out the difference between the cases, and the inapplicability of the provision in the constitution of the United States. It might be well to have a provision in the constitution, declaring that no money should be drawn from the treasury on the authority of

a resolution. He imagined that the gentleman, when he considered the difference between the United States' government, and the government of this state, would be willing to withdraw his motion.

Mr. Sharpe really hoped that the principle contained in the resolution offered by the gentleman from Westchester (Mr. Jay) would not be established. It will greatly embarrass the proceedings of the legislature. Such a provision might be well in the constitution of the United States, but would have a bad effect here.

Mr. Tompkins opposed the amendment as being wholly unnecessary. He considered that the remarks of the gentleman from Albany (Mr. Spencer) were perfectly correct. These joint resolutions are never considered as having the efficacy of laws; and he had never known any money drawn from the treasury on a joint resolution. But the legislature had on some occasions, voted an appropriation on some emergency, with a pledge that it would afterwards be provided for in some proper bill.

Chief Justice Spencer thought there had been some instances in which money had been appropriated and drawn from the treasury by a joint resolution only.

Mr. Van Buren spoke a few words, and adverted to the difference between the general government, and that of this state, in their respective modes of legislation. He had before opposed the motion to rise and report; but as this matter required consideration, he would now second that motion.

Mr. P. R. Livingston rose to offer an amendment to the report presented by the chairman of the committee, for abolishing the third section of the constitution. We have by an unexampled degree of unanimity, determined that we would expunge that article of the constitution. It will be the object of this Convention, then, to adopt a substitute for that article, and to make it as wise and as wholesome as it is possible for the intellect of this body to do. It will be agreed on all hands, that there must be a check somewhere; and the chairman of the committee has reported, that it was the sense of that committee, that it should be reposed in the executive of the state. It will be observed by that report, that every bill which shall have passed both branches of the legislature, shall be sent to the executive. And should he put his veto upon it, and send it back, it is lost, unless two thirds of that branch where it originated, shall pass it, his objections to the contrary notwithstanding. The amendment which he should have the honour of submitting, will go to diminish that power. His object was not to interfere with the proposition to give the veto to the executive; but to provide that in the event of the bill coming back with his objections, it shall become a law if a majority of the house upon reconsideration, shall so determine. He would not at this time assign the reasons, but present it for the consideration of the Convention; and it would, he said, undoubtedly receive that attention, which so important an amendment deserves.

Mr. L. then submitted his proposition, as follows: Eleventh line, strike out the words "two thirds of the members present shall agree to pass the bill," and insert in lieu thereof the following: "*a majority of all the members elected to that house.*" Also, in the 15th line, strike out the words "two thirds of the members present," and insert in lieu thereof the following: "*a majority of all the members elected to that house.*"

Mr. Tompkins questioned whether the proposition of Mr. Livingston was in order. An amendment has been offered, and an amendment to that amendment, which must be determined before any new proposition can be admitted.

Mr. Sharpe said he understood the gentleman from Westchester (Mr. Jay) to say that he wished his motion to lie on the table. Of course the gentleman from Dutchess (Mr. Livingston) was in order.

Mr. Tompkins repeated his impressions upon the question of order.

Mr. Sharpe said he understood that the reason the committee did not rise and report, was, that various propositions might be offered, in order that gentlemen of the committee might have them to reflect upon. If that be the sense of the Convention, he would be glad to receive as many as might be offered.

No vote was taken on the question of order; the amendment of Mr. Livingston, (which had not before been read) was received, and the committee of the whole rose, and reported progress.

Some desultory debate arose upon a resolution of Mr. Wendover, that when in committee of the whole, the chairman of the committee should occupy the seat of the President. Mr. W. thought the seat of the chairman too low. He could not be heard in the part of the house where Mr. W. sat. His motion was lost.

Mr. Van Buren, after a few remarks, introduced the following resolution:

Resolved, That so much of the constitution as relates to the tenure of the office of chancellor, the chief justice, justices of the supreme court, and chief or first judge of the courts of common pleas, be referred to the committee on the judiciary department; and that the committee on the appointing power be discharged from the consideration of the same.

Some considerable discussion, not of a very connected nature, took place upon this resolution, in which Messrs. Van Buren, Young, Munro, Tompkins, Spencer, and J. Sutherland, participated.

Col. Young strenuously opposed the resolution. Among many other remarks, he said, he did not care how many propositions, upon various subjects, should be made. He remarked that it was not to be expected that the propositions of members, or the committees, would perfectly harmonize. We must not in this body look for the wisdom of Solomon. The work could not be like that of the temple. Where the sound of the hammer was not heard. The materials of the fabric must be adjusted, and the sound of the hammer must be heard.

Mr. Tompkins said it appeared to him that the proposition of the gentleman from Otsego, (Mr. Van Buren,) was a very correct one. If this course be taken, we shall have every proposition before us in a distinct shape. Committees will understand to what bounds they are limited—there will consequently be no confusion—and the business of the convention will be transacted with greater expedition.

Some explanations were made between Messrs. Munro and Van Buren; and the resolution was adopted, and

The Convention adjourned.

WEDNESDAY, SEPTEMBER 5, 1821.

Prayer by the Rev. Mr. Lacey. The President took the chair at 11 o'clock, and the minutes of yesterday were read and approved.

THE COUNCIL OF REVISION.

On motion of Mr. Sharpe, the Convention resolved itself into a committee of the whole, on the unfinished business of yesterday.

Mr. Huntington wishing to be excused, Mr. Sheldon was called to the chair.

Mr. Jay made a few remarks upon the resolution which he had submitted yesterday, and answered the objections which had been made, viz: that joint resolutions had never been considered as having the efficacy of laws; and that it would be inconvenient for the legislature to be compelled to obtain the sanction of the executive to all joint resolutions. He had no doubt that it was the theory of our government, that resolutions should never have the efficacy of law: but on examination he found that the practice had been different: The journals of the legislature abound with resolutions which have had the effect of laws. There were at least twenty cases last winter of this kind. He found resolutions directing the comptroller to suspend the sale of lands for taxes—directing the adjutant general to distribute a publication relative to the discipline of the militia through the state, at the public expense, &c. &c. And in 1814, he found that a joint resolution directed the treasurer to pay over to certain gentlemen appointed Commissioners for that purpose, $50,000 for the

relief of the Niagara sufferers. Several other cases were mentioned. In regard to the question of the inconvenience, Mr. Jay cited the practice in other states—in Massachusetts, where the principle for which he contended was established in the year 1780, and had prevailed ever since; of New-Hampshire, Maine, Louisiana, Indiana, and other states, as well as in the federal constitution.

He remarked, however, that he had consulted gentlemen of more experience than himself on the subject, and whose opinions he was disposed to respect. They were of opinion that it would be more correct to introduce the subject as a distinct provision of the Constitution. Without abandoning his object, therefore, he begged leave to withdraw the amendment, with the view of presenting the same hereafter in a different shape. Leave was granted, and the amendment withdrawn.

The amendment offered by Mr. P. R. Livingston was next in order.

Mr. Livingston rose with an embarrassment and diffidence unusual to him. When he reflected, that the amendment submitted to the consideration of this Convention, had received the unanimous approbation of the select committee, he should approach it with awe, were it not that its consummation would rest with that power which created this Convention. It would be necessary to draw the attention of this body to that period of time, when our constitution was formed. We all know it was adopted in an hour of extreme peril, amidst the noise of musketry and the thunder of cannon; and is it to be wondered at, that their deliberations, under such circumstances, were in some measure erroneous? And is it not a matter of wonder under such circumstances, that you have a constitution, containing so much merit and so much wisdom, as the one under which we now live? At that time it was necessary to give that negative power, which is found in the third article of the constitution. At that time the southern district of your state, which contained its greatest weight of population, was possessed by the enemy. Your northern frontier was literally laid waste by the savage. You then gave a power to the Convention, which you never would give under the present circumstances. What they did at that period was binding on the people—what you do now the people are to pass upon. There was in this state more disaffection, than in any other part of the union. Every thing depended on your executive: and you then had a patriot to direct the destinies of the commonwealth. You imposed the most implicit confidence in his integrity, his courage, and his patriotism. The framers of the constitution were afraid that the legislature might be destitute of patriotism, and encroach upon the liberties of the people. This state of things no longer exists. Then you had nothing to apprehend from the man, who was the governor of the state. He was fighting with a rope round his neck. Had the revolution terminated differently from what it did, he would have been made one of the first examples. Therefore this power was at that time wisely vested. It is to be wondered that they did not require a greater majority in the legislature to balance this check.

It is a fact not to be disguised, that a towering majority of this Convention represent the interests, feelings, and views of the friends of democratic government. In a republican government it will not be denied that all the power of the legislature is vested in, and emanates from, the people. If that maxim be not controverted, he was in favour of expunging every article in the constitution, which contravenes that great principle. He should propose a substitute in conformity with that principle. If the third article of the constitution, which relates to the council of revision, had been administered with integrity and wisdom, the amendment now proposed would never have been suggested. It would have excited the admiration of every jurist, and that feature would have been the pride of the constitution itself. If the construction of that great patriot and statesman, now living, and who once presided over the destinies of the state, had been followed, this amendment would never have been brought into contemplation. He gave the wise construction to it. When a law had passed both branches of the legislature, and was presented to the council, the only inquiry was, is it in violation of constitutional rights. If he found no defect in the constitutionality of the law, he did not extend his inquiries to its expedien-

cy, or its tendency to promote the public good ; but he left that to the judgment, good sense, and patriotism, which have ever characterized the representatives of the people. He declared that the two branches of the legislature ought to be the judges of what conduced to the public good. But the moment they began to assume the power of judging as to the expediency of laws, the people became alarmed.

The wisdom of the remark cannot be questioned, that from experience we derive every thing, and from the want of it, we are exposed to every thing. Then let me for a moment turn the attention of the Convention to our sister states. You will find that seven states, viz. Maine, New-Hampshire, Massachusetts, Pennsylvania, Georgia, Louisiana, and Mississippi, have vested the veto in the hands of the governor, and in the event of a bill being returned, they require it to be passed by a majority of two thirds of each branch of the legislature. In the states of Rhode-Island, New-Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Ohio, no veto is provided by their constitutions. In Connecticut, Kentucky, Tennessee, Indiana, Missouri, and Alabama, the principle for which he was contending had been adopted, and the veto was placed in the hands of the governor ; but if he objected, a majority of all the members elected, could pass the bill notwithstanding. In Illinois, the veto was lodged with the governor and council ; but a majority of the legislature could nevertheless pass any bill that might be sent back with objections. In Vermont, the veto is placed in the hands of the governor and council; and if objected to, a bill must lie over for consideration one year. And in New-York, if the governor and council of revision object to a bill, we require a majority of two thirds of both houses to pass it. What is the result from this exposition ? Why, several of the states have no negative at all. Eight or nine only require a majority to confirm, in case of a negative.

How does it stand connected with the experience of this state ? Might he be permitted to invite the attention of the convention to a sister state. He did it with a view to show, that more able statesmen, greater civilians, and more profound jurists, are not to be found in any state in the union—he alluded to the state of Virginia. Yet in that state, they thought it necessary to adopt, and had adopted the great principle for which he contended. It was the great platform, which he should never leave, that all power emanates from the people. He was placed here in an awkward dilemma, as a committee had made a report, without assigning any reasons which led them to such a result. In his argument he must anticipate, and he presumed one of the reasons was, that it was wise to lodge the revisory power somewhere, as it had been urged that acts of violence would be committed by the legislature. This was presuming what never ought to be presumed, that the legislature would deliberately pass a law against the public interest, and in open violation of public or private rights. It had been asked where was the security against an infraction of the rights and liberties of the people ? He answered, the shield between the rights of citizens and the encroachments of legislative power, was an independent and upright judiciary. Where you have on the bench talents, wisdom, and integrity, there could be no act of the legislature in violation of the constitution, without the intervention of this department. Could the life of an individual be put in jeopardy without a jury of his country ? The judiciary, therefore, furnished ample security, whenever there was a violation of the great charter of their rights, which was paramount to all law. If the judicial department but do their duty, all laws in violation of the constitution are but as blank paper.

Is there no danger to be apprehended from the chief magistrate, if you retain that article of the constitution, which permits him to hold his office for three years ? And if the appointing power should so be disposed of, that he should have the right of nominations to the senate, you give him a vast patronage, which carries with it an overwhelming influence.—He asked the convention whether it would not be in the power of the chief magistrate, where the state of things might make it necessary to subserve his purposes, to prevent the passage of any law. The senate, he said, consisted of thirty-two members, and it will require twenty-two members in that branch, to pass a bill which may have received his negative.—When you come into the other branch, it will require more than eighty members.

What, asked Mr. L. has led to the destruction of the third article of the constitution? It was the violence of the executive and council of revision, in endeavouring to restrain the passage of some important bills. A bill passed by a majority of eight in the senate, and thirty in the house, was defeated by a contemptible minority with the executive at their head. It was these acts that agitated the feelings of the public. Is it not absurd to suppose that about forty members in this house, and eleven in the senate, with the chief magistrate, should possess more wisdom than more than one hundred men?

Another reason, sir, in the way of anticipation, is this—I know it will be urged—it will be said that if you require only a bare majority of members elected, you may as well not have a qualifying negative. Not so. I am to presume, and ever shall presume, that that body of men, who are to represent the interests of the state, and who will represent the talents, wealth, integrity, and good sense of the country, will not come here and persevere in the passage of a law which will be fatal to the public interest. Inasmuch as they are the creatures of the community, should they be guilty of such a procedure they would never darken the door of a legislative forum again. That is your security. Legislators may be guilty of an error once; but if shewn to them, they will have more magnanimity than to persist in it.

Many cases may be supposed, and they are not the creatures of the imagination, on which this power vested in an individual, would be highly dangerous. Such a state of things has existed in the union; nay, it has existed in our own state. It is but yesterday since the thunders of the cannon have ceased—since we were engaged in an awful war which was to determine whether our independence could be sustained by the patriotism and valour of the country. A proposition was made for raising a volunteer corps, necessary for our defence, and to save the state from destruction. You saw one branch of the government willing to raise the corps, but they would not let them pull a trigger out of the margin of the state. Suppose a like emergency should occur again, and both branches of the legislature should pass the necessary act for our defence, but a minority of one branch, of numbers enough, with a chief magistrate whose views were in accordance with that minority—how could you get along in that hour of peril? Your state must be ruined, and the national union shaken to its foundation. Our independence would be placed upon a barrel of gunpowder, liable at any moment to be blown up.

Mr. L. in conclusion, said he would not trust a man, place him where you will. In politics, as in dealings, he would consider every man a rogue. He was for going on the safe side. Keep the power with the people. They will not abuse it. With these views, sir, said he, I shall at present content myself, making this frank and candid confession, that if any views of this subject, of mine, shall be pointed out to me as erroneous, there will be no citizen in this Convention who would more readily retract them, and go with the majority.

Judge Platt. Having the honour, Mr. chairman, of being one of the select committee who made the report now under discussion, it becomes my duty to aid in explaining the reasons which induced that report.

The first point which presented itself for the consideration of the committee, was, whether it was wise and expedient to retain any check over the legislative department by way of a qualified negative upon the acts of the senate and assembly. The committee deemed it unsafe to dispense entirely with the supervising power at present reposed in the council of revision. We deemed it essential to the public safety to vest somewhere in firm and independent hands, a *limited veto* upon the legislative will.

In a free representative government there is a strong and natural tendency to *excessive* legislation. That department must be composed of a very numerous body of men. In general we may hope, that they will possess sound and upright intentions; but a majority of them will probably possess little experience in framing laws: and the nature of man, and our own experience shew, that men, suddenly elevated to power, have a natural proneness to use their power immoderately. Our state, in common with others, has from time to time had many bold and rude reformers; who see evils and disorders all around them, in whatever does not accord with their own narrow views of public policy; and

who often apply remedies with so unskilful a hand, and with so little wisdom and circumspection, that in curing one evil, they create many others. Such an inexperienced lawgiver has his eye intently fixed on some particular mischief which he supposes to exist, and then, with a strong hand he extirpates that evil; but in doing so he often throws down the fences erected for the security of private rights. Almost every man who comes to the legislature seems to suppose that he is bound to do something; and this propensity is so strong, that it is often excited into a passion and a rage. All change in the public laws of the state is in itself an evil. It renders the rule of action for a time unknown or uncertain. The stability of laws inspires confidence; and the success of all our prospective plans in the various business of life must essentially depend on that stability. Fickle caprice is the law of a tyrant's will; and in proportion as our laws are unstable, they partake of that characteristic feature of tyranny.

Besides, sir, it is not to be disguised, that we are at all times exposed to the arts and designs of ambitious demagogues, to selfish intriguers, who speculate on the public bounty, through means of party favouritism; and to that *esprit de corps*, which under strong party excitement, often infests with contagious influence, all who are within its immediate atmosphere. The pride of our nature is often humbled, when we see men, who in their private life and character are deserving of all our confidence and esteem: yet, when associated in large assemblies, and inflamed with party zeal, are induced to commit intemperate acts of outrage and violence under the false pleas of public necessity, or of retaliation and self-defence—acts, of which any one of them, in a moment of calm reflection, would blush to think himself capable.

These, sir, are some of the infirmities and vices inherent in our form of government; and so long as man continues imperfect and depraved, these evils must ever attend the many blessings which we enjoy under our happy republic. But while this truth admonishes that perfection is unattainable in any human device; it solemnly warns us on this occasion, to retain or provide every suitable check and guard against those evils; so far as human sagacity and wisdom can discern and prevent them.

On this subject, sir, it is important to realize the distinction between the *actual* power of legislation, and a mere *negative veto*. The power of making or altering the law ought unquestionably to be confided to the two houses of the legislature exclusively. That power expands itself to all objects not forbiden by the constitution, or the fundamental and universal principles of justice.—Such vast powers are obviously liable to great abuse: and if abused, the injurious effects are permanent; and in a great measure incurable. If the legislature pass a law which is unconstitutiomal, the judicial tribunals, if the case be regularly presented to them, will declare it null and void. But in many cases, a long time elapses between the passing of the act, and the judicial interpretation of it: and what, let me ask, is the condition of the people during that interval? Who, in such a case, can safely regulate his conduct? In many cases a person is compelled to act in reference to such a statute, while he is necessarily involved in doubt as to its validity.

But where the legislature abuse their discretion, on questions of *expediency* merely, the mischief is often still worse. In all cases of *private* acts, which comprize three fourths of our statute book, the evil of an improvident act is incurable, because it usually vests private rights in individuals or corporations which no power under the government can afterwards repeal or annul. No matter how unequal, unwise, or inconvenient, such laws must be carried into effect. *Fieri non debet; factum valet.*

But in regard to the evils which might by possibility flow from the improper exercise of the qualified veto on the legislature, they are very limited in their effects, and of far less dangerous character. The council of revision, or the executive holding this check, can originate no bill, nor make nor alter any law. The effect of the objections where they prevail, can only produce the result of suspending the legislative will of the two houses. And the worst consequence which can ordinarily happen, is, that the people must remain under the law as it stood; until the voice of the people, through their new representatives, shall produce a change.

Having come to the conclusion that such a check is indispensable to the public safety; the next question in order, is, whether it shall be retained in the council of revision, or transferred to the governor alone? I yesterday voted for the abolition of the council of revision, but with an implied supposition, that a similar power vested in the executive, should be substituted, according to the report of the select committee.

In deciding this important question, I think it proper on this occasion (especially after the remarks made by the honourable member from Dutchess, Mr. Livingston) to give a concise history of the operations of the council of revision, from the origin of the government, down to the present period. I have devoted most of my time since I had the honour to be appointed on the select committee, to an examination of the minutes of that council. I have made an abstract in the form of a schedule, shewing the number of bills objected to by the council in each year, and the distinct grounds of objection in each case. I think this document cannot fail to be useful in our deliberations; because the past operations and experience under the exercise of this supervising power, will aid and guide our judgment, as to its probable effects and operation hereafter.

I now ask the attention of the committee to the abstract which I have alluded to; which is as follows:

Years.	Number of bills objected to.	As unconstitutional.	As inconsistent with public good only.	On both grounds.	Years.	Number of bills objected to.	As unconstitutional.	As inconsistent with public good only.	On both grounds.
1778	6	5	1	4	1801	2	1	1	1
1779	4	1	3	1	1802	–	–	–	–
1780	4	2	2	2	1803	1	–	1	–
1781	3	3	–	3	1804	2	1	1	–
1782	3	1	2	1	1005	3	2	1	2
1783	4	3	1	3	1806	5	3	2	2
1784	7	5	2	5	1807	4	4	–	3
1785	16	10	6	9	1808	2	2	–	2
1786	2	1	1	1	1809	3	3	–	2
1787	3	1	2	1	1810	4	4	–	4
1788	4	1	3	1	1811	2	2	–	–
1789	2	2	–	2	1812	4	2	2	–
1790	1	–	1	–	1813	5	4	1	4
1791	3	2	1	2	1814	2	2	–	2
1792	3	3	–	3	1815	1	1	–	–
1793	1	1	–	1	1816	1	–	1	–
1794	2	–	2	–	1817	1	1	–	–
1795	2	2	–	–	1818	1	1	1	1
1796	1	1	–	1	1819	1	–	1	–
1797	4	1	3	1	1820	2	2	–	1
1798	4	1	3	1	1821	2	2	–	1
1799	–	–	–	–					
1800	1	–	1	–		128	83	45	67

Whole number of bills passed - - - 6590
do. do. objected to - - 128
do. do. passed notwitshstanding 17

The honourable gentleman from Dutchess (Mr. Livingston) has seen proper to reproach the *modern* council of revision by several severe imputations; and particularly by charging them with having usurped the power of judging of the *expediency* as well as constitutionality of bills passed by the legislature. Which construction he has asserted to be contrary to the usage and interpretation which uniformly prevailed in the council of revision; until after the expiration of the administration of his excellency governor Clinton; on whose exalted character he has made a high and just eulogium. [Mr. Livingston here rose and remarked, that it might not be improper for him to explain, that it was his excellency governor Jay, to whom he alluded in his former remarks. During his administration he contended that it was the business of the council of revision to pass all bills where no constitutional objections could be urged against them; taking the ground that the two branches of the legislature were the most capable of judging of their expediency.] I thank the gentleman for the explanation; but I regret that it only affords me another opportunity of pointing out another egregious mistake in point of fact. But I acquit that gentleman of all wilful misrepresentation; of which I know him to be incapable. That honourable member has now told the committee, that governor Jay inflexibly maintained the construction that the council had no right to judge of the expediency of bills. He has also informed us that the Convention of 1777 gave the powers in question; because that patriot and sage, the venerable George Clinton, was then governor; to whom no powers were thought to be too large; because he was incapable of abusing them. I agree in all the praise bestowed on that venerable man. But the honourable gentleman last up, has fallen into a *remarkable* mistake. For although governor Clinton was the first governor elected under the constitution; yet it was very certain that he was not governor when the Convention framed the constitution. It was not, it could not, be known at that time, who would fill any of the offices under the constitution; and we must presume that no powers were granted with reference to any individual.

From the schedule which I hold, sir, it appears most unfortunately for the explanation just given by the gentleman from Dutchess, that the very first bill that was passed under the constitution, was returned by the council with their unanimous objection on the sole and distinct ground that it was inexpedient and inconsistent with the public good. The council, as appears by the minutes, was then composed of Gov. Clinton, Chancellor Livingston, Chief Justice Jay, Justice Yates, and Justice Hobart. The bill was specially committed to Chief Justice Jay, and he drafted the objections now on the council minutes. Thus we see that those distinguished men who were leading members of the convention, at the first council that was ever held under the constitution, gave an unanimous construction to the third article of the constitution, which exactly accords with the interpretation so loudly complained of against the present council. The schedule which I have exhibited, shews, that the whole number of bills that have been objected to by the council, from the origin of the government to this time, is 128; of which number 81 were objected to as repugnant to the constitution; 44 on the sole ground that they were *inconsistent with the public good.*

For example, the first act objected to in 1778, was a bill requiring certain oaths, and involved no question but that of *expediency.* In the same year another bill was objected to, the sole object of which was to make the county liable for the default of the sheriff. In 1779 the same council objected to a bill to prevent horse-racing, on the sole ground of expediency. In 1785 a bill for preventing inoculation of the small-pox was objected to as contrary to wise policy, which required the practice to be encouraged. In 1788 a bill authorizing the sale of Governor's Island, in the harbour of New-York, was objected to on the sole ground that it was wiser to retain it for purposes of public defence. In 1798, during the administration of Gov. Jay, a bill for substituting paper for parchment in certain public records, was objected to in council; his excellency the governor concurring in the objection.

Thus it demonstrably appears, that the construction and practice in the council of revision from 1778 to 1821 inclusive, has been uniformly the same under

the varied succession of governors, chancellors, and judges; and the attempt to change that usage, and the novelty of construction, are imputable to those only, who, within a very few years, have insinuated the charge of usurpation against the council. It appears from the records in the secretary's office, that the whole number of bills ever passed by the legislature up to this time, is 6590; of which 128 have been objected to by the council of revision; and 17 only of that number have been passed into laws, notwithstanding the objections.

Sir, I claim not for the members of the council an exemption from the frailties of human nature. I know they are men of like passions with others. They have, no doubt, in their arduous duties, committed many errors. But fortunately all their acts are on record, with their reasons for their objections. I invite gentlemen to a careful examination of that record; and then, sir, I invite to a comparison between the acts and proceedings of the council, and the whole conduct and proceedings of any other branch or department of the government.

The evils and inconveniences resulting from the council of revision are obvious and apparent, while its benefits are chiefly unseen and unacknowledged. Its operation consists not so much in doing positive good, as in preventing mischiefs. It has undoubtedly, as all confess, hindered many dangerous and pernicious bills from becoming laws: but how many schemes of profligacy; how many base speculations; and how many acts of party violence have been strangled and suppressed, because their authors dared not to present them to the test of such an ordeal, it is impossible to demonstrate; but there can be no doubt in the mind of any reflecting man, that much evil has been thus prevented. The very existence of such a power, in wise, firm, and independent hands, has in a thousand instances prevented the necessity of using it; and this silent and unseen operation has been most salutary and benign.

I owe it to myself, and to the public, to declare, that in my judgment such a power will never be exercised with so much wisdom and steady firmness in any other hands. In my opinion we shall by this change, injure the constitution, as it regards the legislative department: but it will improve the constitution as it relates to the judicial department. By removing the officers of the judiciary from all connexion and collision with the legislature, I hope that jealousies will be removed, and harmony restored and preserved between those departments. And so far as I may be supposed to have any personal interest in the question, I declare my heartfelt satisfaction at the complete separation. We are now called to revise the works of our fathers' hands. To a small number of us on this floor, this is *literally* true: and all I trust will recognize in the framers of our constitution, the fathers and founders of the state. I feel the solemnity of the occasion, and when I see the axe laid to the root of the tree which our fathers planted, and watered, and defended; a tree which has yielded much good and wholesome fruit; and has so long afforded to us its shade and shelter; I confess, sir, that I witness its destruction with no ordinary emotions.

Let the council of revision descend in silence to the grave. But let no man now write any inscription on its tomb. When the feelings, and interests, and passions of the day shall have subsided, if I do not greatly deceive myself, impartial posterity will inscribe an epitaph on that tomb, expressive of profound veneration.

In regard to the intent of the proposed power in the executive alone, I concur decidedly in the report of the select committee. Such a power is necessary to check usurpation in the legislature, which must ever be the strongest. The power is necessary as a shield to protect the weaker departments against the controlling influence of the legislature. The maxim of separating the departments, is of vital importance to the existence of civil liberty. But, sir, it is idle to separate them in form, on parchment, if in reality they are not made independent and capable of self defence against each other. No single elective magistrate can stand against the persevering and systematic assaults of a numerous body of popular and influential men who compose the legislature. They not only have the power over the subsistence of the officers of the judicial and executive departments; but in the plenitude of their power, they may so regulate the duties of those officers, as to render their situation uncomfortable in a variety of modes: and they may in fact thus indirectly legislate the governor, and chancellor, and judges out of office.

The best definition of tyranny is, any form of government in which all the powers, legislative, judicial, and executive, are united in the same hands. And in the same degree as the power, and strength of any one of the departments, bears an undue proportion to those of any other department; in that same degree, will the government partake in reality of the nature and character of despotism. It is in vain, sir, to mock the people with the form of separation in the departments; so long as any one is so disproportionate in strength as to compel the other to act in subserviency to its views. My fear is, sir, not that the governor will wantonly abuse this power; but that he will not exercise it with that firm and intrepid independence which the public interest and safety may require.

Mr. P. R. Livingston said he was unwilling to become a monopolist, or obtrude himself upon the Convention. He merely rose to beg of some gentleman to reply to the honourable gentleman who spoke last. If no one felt disposed to reply, he should feel it his duty to do so himself. [After waiting a few minutes, and no one manifesting a disposition to speak, Mr. L. rose and proceeded.] He had remarked when up before, that if any satisfactory reasons were assigned in favour of the report, he should, with that frankness and candour which on all occasions he was disposed to exercise, withdraw his amendment. He regretted that no other gentleman had seen fit to take the floor, that the Convention might have profited by the remarks of others, and that he might have surrendered any farther pretensions to the support of the amendment he had offered. The honourable gentleman from Oneida (Judge Platt) had remarked, at the commencement of his observations, that the executive, judicial, and legislative departments of government ought to be kept distinct. With regard to the correctness of that maxim, no one could doubt. That point being settled, he was surprised so much time should have been wasted in discussing it. In regard to the next topic, which was excessive legislation, he confessed he could not see the force of the remarks, inasmuch as you cannot constitutionally fix bounds to legislation—it is not in the power of the people to say how much the people shall do. They come to legislate on constitutional grounds, and cannot legislate where the constitution interposes. The gentleman last up had remarked, that he (Mr. L.) had fallen into an egregious error, as to the adoption of the constitution, and the first chief magistrate elected under it. He did suppose, that he should not be accused of the absurdity of stating that a chief magistrate was elected before the constitution was adopted; and his honourable friend (Mr. Platt) well knew that no one was contemplated but George Clinton. The constitution was formed for that distinguished patriot, who was then at the head of our armies in the field of battle. It was with that view that this qualified negative was adopted, requiring two-thirds of the legislature, after bills had been returned with the veto of the executive. It has been suggested, that great research had been made, and the documents adduced evince the fact. The object of this investigation was to prove, that the third article of the constitution had been discreetly administered. It was the practices which the honourable gentleman had mentioned, of which he had been complaining—the exercise of the revisory power had excited all the feelings and passions, which had led to the abolition of that part of the constitution. He wished the honourable gentleman had thought proper to give the character of the bills, to which the council had raised objections, as well as of those which had passed, notwithstanding their objections. He did not boast of great experience—his age did not entitle him to it—public life gave him no claims to it. He had, however, seen some experience, and a woful experience it had been. He had seen the senate pass a bill by a majority of ten, and the bill passed by an unexampled majority in the lower house; yet he had seen it defeated by this branch of the government. Again, he had seen a bill pass unanimously—not unadvisedly, as might be the case in an assembly of Massachusetts, where 900 members were acting, and where you might rivet them, and they would hardly know it; but by thirty-two grave, venerable, and intelligent senators; not called up in a moment, and passed in a moment; but undergoing all the ordinary forms of legislation; referred to a select committee; and passed by an overwhelming majority in the house of assembly: I have seen that bill also rejected by the council. Are these the only

two bills? Permit me to go to the secretary's cabinet, and I will find many bills which have been rejected. But the reasons, it is said, are entered upon the records of the council. Reasons—reasons, did I say; when Reason searched for reasons in the objections, she could find none. He was unwilling to detract from the reputation of that council. The time will arrive when it will descend to the mansion of rest. Should I (said Mr. L.) survive them, I should not wish to be their biographer. I shall never detract from any merits which they have; nor shall I refrain from uttering any reproaches which they may deserve. They are public agents like myself. Their conduct is placed before the public; and it is for the public to pronounce on their merits or demerits.

With regard to the framers of the constitution, he had as great respect for those living as his honourable friend; and those who had departed, he venerated as much as he. I (said Mr. L.) had no father in that Convention: but I had there a friend—a friend whose talents have been conspicuous in every department which he has filled, and whose virtues have preserved for him imperishable fame.

With regard to the exhibition of the fact in relation to the number of laws which have been passed since the adoption of the constitution, it appears that they amount to more than six thousand; one hundred and twenty-four of which have been returned by the council with objections. Of these latter, it appears that seventeen have become laws, notwithstanding the objections. The exhibition of these facts establishes one important position; and it is this, that of six thousand and odd hundred laws, the council of revision have been unable in all that legislation, to put their hands on no more than one hundred and odd laws—yet it is said we cannot trust to legislation—we cannot trust the people. And yet, under such circumstances, it is pretended that it is dangerous to trust to the legislature. Mr. L. had never seen any disposition on the part of the legislature to encroach upon private rights. Now experience, as my honourable friend agrees, and as every man of good sense will agree, is the test of truth. You borrow from the experience of every part of the world, and adopt what is wise, let it come from where it may; and it appears that in a majority of the United States, they have not this qualified negative. If they have, it is in the way which he now proposed. And have these men no experience?

Mr. L. again adverted to Virginia; and will the state of New-York, admitting her to be great, powerful, and populous—will she undertake to say that she has more civilians, better jurists, wiser statesmen than that state? If not, then he said we have the experience of our sister states against this qualified negative. Go to the west. There you find wisdom. These states have been settled from the east, where you all agree that there is more intellect in a given number of the people. Ohio and Tennessee, and all these western states, place this qualified veto on the ground that he did. Had these states, after all their experience, found, as the honourable gentleman from Oneida has contemplated, so many evils growing out of their system, would they not have amended their constitutions? Sir, you live in a country where a constitution can be as easily altered, as a mechanic can make a garment for an individual. It is not with the constitution of this state, as with that of some countries, where an amendment must be made at the expense of blood. Here an amendment must be made congenial with public sentiment and public applause. Now, have we not come with public sentiment on this subject, and are not some of you already pledged to effect certain amendments; and to what feature of the constitution has the public mind been more firmly directed, than to the council of revision? You have been told that two-thirds of both branches of the legislature should be required to pass a bill, after receiving this negative. What are you about to do; you are transferring this very power to a solitary individual, the chief magistrate of your state; and I agree with my honourable friend from Oneida, strong as his objections are, to blending the three branches of government, I would rather retain the third article to the constitution, than to give that negative to a single individual, requiring two-thirds of the legislature to pass it after receiving his veto.—And these are my reasons. Will any gentleman be bold enough to say, that a governor of the state is not a partizan

of it? He must be so; the opposite position no man dare take. How did he become chief magistrate of the state? By the voice of the people, in conformity to whose views he is bound to act. Do you believe that a republican government will ever be without party? God forbid. When you have a party in the state who oppose the dominant party from principle, it is a party to be respected and desired, if we wish to preserve the freedom of our state, and of the United States. It is well recollected, what important collisions have grown out of this point, among some of the first statesmen of our country; and in my opinion, in cases of peace or war, two-thirds of both houses of congress should be required to overrule this negative. He again alluded to the principle upon which he said he had started, which was, that all power originated with the people, and should of right be exercised by them. He said, it appeared to him like a solecism, to say the people would assent to measures which would be injurious to their own good—that it should be in the power of a minority to rule a majority. You see, that in our assembly it would require eighty-four members to carry a bill objected to by this power; and will it not be in the power of a chief magistrate, possessing this negative voice, under such circumstances, to get a minority sufficient to defeat the most wholesome bill? These opinions made an impression upon his mind; he did not know whether they would make the same upon the minds of the Convention; if they did, he hoped the amendment would be adopted. We have felt the evils resulting from the power given by the article which we have agreed to expunge from our constitution. We hear of no evils arising from the plan adopted in a large number of our states, and which I now propose as an amendment to the resolution before us. If, after due time, that amendment shall be found to be injurious, let that power which created and is represented by this Convention pass upon it—it is the people that are to pronounce whether it is right or wrong. If my amendment be found correct in the eyes of the people, they will be bold to say so; if they dislike it, they will say so, and the article stands as it has done; because, let us resolve what we may, it does not alter the constitution.—It is the people who are to determine for themselves.

Mr. Edwards. It is a question of no ordinary magnitude to which our attention has been called, and I should have been much pleased had gentlemen, of maturer age and experience, expressed their sentiments on the subject. But as there appears to be a reluctance on their part to come forward to the discussion, I beg leave to state the views which I entertain respecting it. The question in part is this—what power hereafter shall control the property and liberty of the people of the state of New-York? This, sir, is the plain state of the case, and it has devolved upon us, as the representatives of the people, to say where this controling power shall be lodged. Although I fully accord with my honourable friend from Dutchess (Mr. Livingston) in the sentiment that all power is derived from the people; yet the results to which we arrive are essentially different. It becomes us, in exercising the high trusts that are committed to our charge, to look circumspectly around us, and to reflect that we are acting upon principles that will be operative, perhaps for centuries to come, both in peace and in war, in the shades of tranquillity, and in the agitations of tumult. On this subject we may, perhaps, derive information from the analogies of private life. If, sir, I am about to depart out of the world, and to leave my estate to my children, who will not arrive at maturity for many years to come, what course would prudence dictate, in relation to the disposal of my property? Would not every consideration of propriety lead me to interpose as many checks and balances as possible to guard it from depredation? Let the same cautious vigilance be resorted to on the present occasion. It is not, however, because I am afraid of the people, that I would provide these checks. It is because I fear that the representatives of the people will not be faithful to their trust. If it is taken for granted, that the representatives of the people are always immaculate—if their hearts are always pure, and their judgments unerring, whence does it happen that we are now assembled? Why have we appointed a committee to establish a bill of rights to stand as landmarks to them and our rulers, and to guard against usurpation and encroachment upon the liberties of the people? Do not these acts prove, that the representatives may

sometimes violate their trusts? And that it is sometimes necessary to put a bridle in the mouths of those agents who would overleap their duties? If no check is necessary, whence does it happen, that two branches have been deemed necessary in the legislative department? May not the same argument which we have heard, be applied to the inquiry—are not 126 men more competent to judge of the expediency of measures than 32? Why this check on the part of the senate? And this too, by men elected for four years, and acting counter to the sentiments of those who come fresh from their constituents, bearing with them the present sentiments of the people? The answer is easy. In the governor we place a sentinel over our rights to see that these representatives, or agents, perform their duty. If that sentinel gives a false alarm, or abuses his trust, it will soon be in our power to displace him, and transfer his duties to another. And is there any thing aristocratical in this? Or is it not a salutary measure, calculated exclusively for the benefit of the governed? My experience in legislation has not been great, but it has been sufficient to convince me, that men will bring into the chamber of legislation their prejudices and passions, and that these will sometimes betray the nicest honour, and obscure the soundest judgment. Hence it becomes necessary to resort to another tribunal, to correct its imperfection. It is with legislation as with the administration of justice. It should be not only pure in fact, but unsuspected and satisfactory to the minds of the people. And what can give greater satisfaction to the public than to know, that the doings of its agents have been approved by the chief magistrate? But, sir, there is another consideration of peculiar weight on this question. And here I would recur to the primary principle of a republican government, that the will of the majority should govern, when fairly ascertained and clearly expressed. It is admitted, that under our present system, it is in the power of twenty, over one fourth of the votes, to control both branches of the legislature. But when the governor is constituted a coordinate branch, this event can never happen. He is elected by a majority of the people, and of course through him, every person in the state will possess a voice, and lend a sanction to every law that is passed. It is worthy of remark, that among all the forms of attack which the general government has sustained, the principle which is here engrafted from the federal constitution, has never been objected to. The honourable gentleman from Dutchess (Mr. L.) has referred to those states where no qualified veto exists. If a reference is made to the practice of those states, I think the gentleman will find but little cause for exultation. Where do you find stop-laws? Where those flagrant violations of the constitution, but in the states where this salutary check has not been provided? New-England has been referred to, by my honourable friend, to justify his motion. Sir, the people of New-England are a peculiar people. Descended from the same ancestry—embarked in the same cause—employed in the same pursuits—connected and distinguished by the same habits and associations, they are like a band of brothers, and the laws which are required to govern them are altogether unfitted for the regulation of an incongruous population like ours. I have long been sensible, in common with a large class of the community, that we have too much legislation. It renders the law unstable, and it requires a good lawyer to keep pace with the construction it receives. All that the governor can say, when vested with the powers contemplated by the committee, is—stay your hand. If gentlemen are afraid that we shall not have law enough, let them go to the lawyers' shelves and tables that groan beneath the burden. An erroneous idea seems to have prevailed in relation to the powers and origin of the governor. Who is he? and by whom is he appointed? Does he derive his authority from the king of Great Britain? Is he an usurper? If so, let us unite to depose him. But, sir, he is the man of the people—elected by their suffrage, and identified with their interests. He is a watchful sentinel to guard us from evil, and a zealous friend to admonish us of error. Much has been said respecting the necessity of keeping separate the different branches of the government. I yield a cordial acquiescence to the principle. But if we content ourselves with parchment regulations—if nothing more effectual is done than to authorise the governor to recommend a reconsideration of the bills that are passed, it is easy to perceive that the weaker power will be trodden down

by the stronger, and that the executive has become a cypher before the representatives of the people. On this, as on all other subjects, however, I have but one object in view. That object is to endeavour that the agents of the public are so guarded, checked, and controled, that the people may lie down and rest in security, with the consciousness that their rights will be protected.

Gen. Root. It has been well observed, that it is an important question which is now submitted to the consideration of this Convention. It is important, because it involves the fundamental principles of government; and if, in its consequences, those principles of free government which it embraces, should be hastily trodden under foot, it will be cause for mourning. I say, sir, that if it shall be determined that neither the people nor their representatives have power to decide upon their own actions, it will be cause for mourning.

I have listened, sir, with much attention to the handsome encomium which the honourable gentleman from Oneida (Mr. Platt) has been pleased to bestow upon the council ot revision; and I had even travelled with him so far, that I had almost lost sight of the question before the committee.

It has been said, sir, by the honourable gentleman, that of one hundred and twenty-eight bills which have been returned by the council with their objections, only seventeen have finally pssed by the constitutional majority of two-thirds. What does this prove? It proves that in seventeen cases out of one hundred and twenty eight, a majority of two-thirds of both branches of the legislature have been of the opinion that the council of revision did not care for the people, or would not listen to their voice. We have been told, that on the return of bills, the legislature have often been unanimous in assenting to the objections which the council have made. What can we infer from this? That a disposition exists in the representatives of the people to acquiesce, whenever their attention is drawn to the unconstitutionality of a bill. It also shews, that it is not necessary to require the assent of two-thirds of the legislature, as is contemplated in the report before the committee, for if the legislature has been incautiously involved in error, they are ready to retract it.—But we are informed of a certain silent, secret operation of the council of revision, which has been extremely beneficial to the public welfare. The annals of the state, sir, and the recollections of gentlemen will shew, that the operations of that body have not been altogether of a *silent* and *negative* character. Witness the *informal amendments* of midnight. Witness the various other acts of a *positive* character, which have aroused the indignation of the people, and made even *Felix tremble*. The inscription prepared for its tomb is written on the journals; and I am willing to leave it to posterity to weave those garlands which shall decorate its grave. It is gone, sir, and what is its substitute?

It is proposed to refer the powers of the council to the governor; and it seems to be feared that the executive will too far bend to popular opinion. Sir, I deprecate that firmness which grows out of an independence of the popular voice, to oppose the popular will. But before we discuss the manner in which this veto may be exercised, it may be proper to consider in what it consists, and what has been its history and progress. The framers of our constitution had received their education under the system of British government, and with a deep veneration for British law. It is not extraordinary, therefore, that we should find them talking of royal negatives. Indeed, sir, we ascertain indubitable traces of the British constitution throughout the whole of our own. The check here proposed is not positive, but qualified; for the experience of all states has shown the folly of permitting an unqualified veto to reside in any branch of the government. And we find constitutions of the states more perfect, the later the period in which they have been made.—That of Connecticut, which is the last, is in my judgment the most perfect. It has provided, that when a bill has been returned by the governor with his objections, the ayes and noes shall be recorded, and if a majority of both houses adhere to their vote, the bill shall become a law; the governor's objections to the contrary notwithstanding.

But in England, sir, from whence our idea of a negating power seems to be drawn, all laws are supposed to be derived from the king, and are enacted in the name of his most royal majesty. Many reigns intervened after the con-

quest, before there was any call of a parliament whatever. At length, by the interposition of the hardy barons, that call was obtained, and thenceforth laws were passed in the name of the king, by the lords spiritual and temporal and his faithful commons—subject, however, to his royal assent.

And why has this branch of the royal prerogative been preserved in England? To protect his majesty's rights from the encroachment of the lords and commons. But to preserve the analogy, and to apply the argument to this country, where it is acknowledged on all hands that the sovereignty resides in the people, this veto should be lodged with them, as they represent majesty, and not in the people's agents, to enable them to defeat the will of their masters.

The authority to be given to the governor should be supervisory only; the repose of confidence, not the delegation of power. It should be in the nature of a committee of enrolment, to see that the laws are correctly engrossed. Even in England, sir, there is no such thing as a direct and absolute veto. His majesty is too *modest* to assume that language; he only says, *Rex advisare vult*—the king will advise upon it.

The notion of a *veto* was derived from ancient Rome. It came from the tribunes of the people. After a long struggle between the patricians and plebeians, the latter obtained the power of hindering the passage of any law which the patrician senate should have enacted. The tribunes were the organ of their will, and whenever they thought proper to interpose, they pronounced the *veto—I forbid it.* And what, sir, is derivable from this authority? That the people, not the rulers, may refuse their sanction to a law which shall injure them. There is no analogy, therefore, of which the gentlemen opposed, can avail themselves, unless they resort to the maxim, that it is expedient to "save the people from their worst enemies—to save them from themselves."

It would seem from the remarks of my honourable friend near me, (Mr. Edwards) that it is necessary for the security of the people, that they should put a bridle into the mouths of their representatives to restrain them. And is it really so, that they require snaffles, and reins, and martingales, to keep them within the path of their duty? No, sir, they are members of their own body, subject to, and affected by, the same laws, and possess a common interest with those who elect them.

But it is said, sir, that if the governor does not possess a sufficient power to thwart the will of the people, his authority will dwindle to a mere shadow. In order, then, to decorate the governor with some of the trappings of royalty, you would deprive the people of one third of their power! You would impoverish them of their rights, to enrich the executive with prerogative; and the people are to be stripped of their privileges, to confer high powers upon the public functionaries!

It was complained of yesterday, and *almost* admitted by the honourable gentleman from Albany, (Mr. Spencer) that party feelings *might* enter the chamber of the council of revision. And would not the governor strongly feel the influence of party zeal? Or do gentlemen suppose that he will be less influenced by those considerations, when disconnected from the judiciary? Has not experience shewn, that when a majority of the legislature was against him, but few bills could pass that council; but when he possessed the majority, few were denied? There are those, sir, who are willing to cling to a sinking ship: those who, having nothing to lose, would be willing to advise him to desperate measures; men who, when they had lost all hope, can minister to his moroseness, increased by discomfiture and defeat, and who may justly be called evil advisers. Then this council, and that moroseness, may have a most pernicious effect in the prevention of salutary laws.

It was charged upon the king of England in the declaration of independence, that he had "refused his assent to laws the most wholesome and necessary for the public good;" and if the same evil advisers continue to surround the executive chair, when the angry passions have survived his popularity, and give the same advice, we cannot but expect the same unfortunate and pernicious results.

In all ages, where free governments have existed, those have been found, who would transfer to the minister or executive, more power than was expedient for the good of the people. This tends to perpetuate the aristocracy that

exists in the constitution, and instead of being fostered, should receive the firm opposition of those who advocate the cause of the people.

Chancellor Kent. If it is deemed adviseable to retain this feature in our constitution, it certainly ought to be so constituted as to give it an efficient operation: the check should be such, that it could, when necessary, be executed to some beneficial purpose. If the proposed amendment to the report of the committee should be adopted, the check would be merly nominal, and wholly inoperative. The executive would derive from it no greater power or control over the proceedings of the legislature, than any individual member of the legislature, voting with the majority, at all times possessed, from being authorized to move for a reconsideration of a question the next morning after it has been decided. To talk of such a provision as this being a check, was idle and trifling.

The executive is elective, and his continuance in office is for a very limited period, and it could not be supposed that he would ever exercise this power but on great occasions—on occasions when such interference should be imperiously demanded by a manifestly improper exercise of legislative authority: when the boundaries with which the constitution had been fenced and protected, like other branches of the government, should be invaded; or when the rights or property of individuals should be arbitrarily assailed.

It was a gross error to suppose that the power and authority of the people was delegated to the legislative branches of the government alone. The executive, as also the administrators and expounders of the laws, were equally with them the representatives of the people, who had delegated to them the power and authority which appertained to their respective offices; and it was necessary for the purposes of good government, and for the public peace and welfare, that these agents of the people should be supported and protected in the due exercises of their authority.

It has been determined to abolish the council of revision; this will greatly narrow the operation of the veto provided on the passage of laws. The council of revision was not only vested with the power, but it was their duty, to object to laws inconsistent with the public good. That body had uniformly from the first organization of the government, exercised the power to the extent granted to them; whether perfectly, wisely, and discreetly, on all occasions, it was not now material to enquire. If the amendment, as reported by the select committee, should be adopted, it was not probable that the qualified veto thereby given to the executive, would ever be exercised but on constitutional grounds. With the gentleman from Oneida, (Mr. Platt) he apprehended that the power would be very seldom exerted. The national executive possesses the power it is here proposed to give to the governor, and during the operation of that government, it had been but twice exercised, and in both instances on constitutional grounds.

It was within his experience, that one third of all the laws passed at a session, had been revised by the council of revision on the last day. That body consists of several members, and the labour was divided between them. When this power shall be vested in the executive alone, and it should happen that so large a proportion of the bills should require to be examined in so short a time, it would be impossible for him to detect any errors, unless very obvious, or unless his attention should be directed to them by the very title of the act.

He apprehended that the sober minded people of this state would not be satisfied to see this column of the constitution destroyed, without having it replaced by something efficient in its character, and useful in its operation. To adopt the proposition under consideration, would give to the executive only a nominal power. It would be better to have no veto, than such as is here proposed. He would rather see laws passed by the votes of the two houses alone without any check whatever, than to adopt one so weak, inefficient, and useless. The veto as it would be constituted by adopting the report of the committee, would be a harmless power in the hands of the executive. He could never exert it to the prejudice of any other branch of the government, nor if so inclined, materially to prejudice the public welfare; at most, he could only temporarily prevent the enactment of laws, and must always prove too weak to make any successful attack on the power or influence of the legislature.

The necessity of a check of this kind, was not because legislative bodies were always, or even usually, disposed to transcend and abuse their authority, or to err in the exercise of it, but because, from their organization, they were sometimes liable to act hastily and unadvisedly, from the impulse of passion, or from temporary excitement. These were evils to which popular assemblies were naturally prone, and against which they could not at all times be guarded. It was, therefore, wise and prudent, that there should be a check lodged somewhere, of sufficient energy to control the legislature when impelled by passion, or influenced and operated upon by improper views; or with a disposition to encroach upon the other departments.

In the government of the United States, we have a precedent which certainly ought to be received with deference and respect by all. The adoption of the federal constitution was warmly and vehemently opposed by a large proportion of the people of this state. It was supposed by very many, to be hostile to our interests, and every one of its provisions was scanned and scrutinized with the greatest caution and severity; and though the most of the articles were considered more or less exceptionable, yet throughout the whole of the discussions, no one ever thought of making any objection to the qualified veto which it gave to the president. Thus have the people of this state twice most solemnly and deliberately approved of the principle for which he contended; once in the formation of our state constitution, and again in the adoption of the federal constitution.

Gen. Tallmadge wished to add but a few remarks to those which had already been made. He urged the caution which ought to be observed in approaching the constitution. Upon every question that may arise in our progress, we ought to proceed with care and deliberation; and when we determine a point, we should do it with great circumspection, to see whether, as far as can be, we shall preserve the principles of good government, and the spirit of our present constitution. When gentlemen declare the embarrassment they feel; and speak of the magnitude of the duties committed to our charge, the conclusion to be drawn, is, that greater moderation was required; that we should pull down with the greater caution; that we should so alter as to correct the omissions and mistakes, and yet preserve the spirit, and as far as may be, the form of the present constitution; with such views, the select committee had only proposed to sever the judiciary from the council of revision, retaining, however, that feature in the government, and they had adopted the language of the constitution of the United States, from its simplicity of expression, and because the experience of the nation had given it construction. It has been remarked, that yesterday we abolished this part of the constitution; and it has been asserted on this floor, that the vote of this house and the report of the select committee, was founded on the misconduct of the judges and the odium attached to their characters. He believed that no such motive influenced the majority of this Convention in their vote of yesterday; and it is due to the select committee of which he had the honour to be chairman, to say, that in recommending the abolishment of the council of revision, and the adoption of the report which they had presented, they had acted with the sole view of separating the departments of government, and preserving the great principles of the constitution, and not under a belief that they were sapping its foundations. He disclaimed on his own part, and on the part of the committee, any intention by the recommendation which they had made, to pass any censure on the judiciary. It was not the province of the select committee to pass censure. They had looked at the great principles of government, and had unanimously agreed in the propriety of separating the judiciary from the legislative department—connected as they now were, it implicated them in the strifes and contentions of politics. Separate them from legislative and confine them to their judicial duties. It will leave them uncommitted, to pass upon such laws as may come before them. The rights of individual citizens ought not to be prejudged by persons in the council of revision, nor until such citizens shall have been heard by themselves or their counsel, before the judges in their judicial capacity. Make the separation; it will free them from attacks and imputations which lessen the influence of the judiciary system. It will operate as a kindness towards

that distinguished branch of the government. They ought not to be the defenders or the defamers of this or of that man. Set them apart for the performance of their particular duties. And let us hope hereafter, that the public may only know the judges by their judicial determinations.

It was with these views that the committee thought proper to separate the judiciary from the council of revision. As rumours had already gone abroad that the council of revision had been abolished from a disrespect to the judiciary, he deemed this explanation due to the committee, to shield them from the imputation of false motives. He regretted that the honourable gentleman from Oneida (Mr. Platt) had thought proper to introduce into his argument the subject of an epitaph upon the council of revision, or to excite compassion for a part of the constitution, which he was willing to see go down silently to the tomb of oblivion. We did not come here to write inscriptions, or to pronounce eulogiums on the living or the dead. We had assembled from different parts of the state, possessing a knowledge of the interests, views, and sentiments of our constituents, for the purpose of establishing a system of government, which shall be permanent in its duration, and provide for the exigencies of the community.

Any government, he said, was a libel on man. If there were no weakness, no frailty, no corruption in human nature, governments would be unnecessary. The very idea of government, therefore, supposed that it was to operate as a restraint upon the vicious and the profligate, and that all its provisions should be based upon this fundamental principle.

He then went into an examination of the several departments of government, and the importance of keeping them distinct. The experience of all ages and all countries convinced us of the necessity of checks and balances in the organization of governments, and of giving to one branch a restraining power upon the others. Wherever this has not been done, the power of one department has become exorbitant, and invariably ended in tyranny. Such was the depravity of man, that restraints were in all cases found necessary to check him in his disposition to acquire power and to trample on the rights and liberties of others.

In the establishment of our system of government these great principles were woven into our constitution. The several departments were intended to act as checks upon each other. In the organization of the legislature, it was thought advisable that there should be two branches—the senate and assembly, that the one might control and check the abuses of the other, and prevent either from acquiring an overwhelming and dangerous power, if such a disposition should ever be manifested. As an additional safeguard to the rights and liberties of the people, a third branch of the legislature, the council of revision, was instituted. Its object was to resist the encroachments of the senate and assembly, whether through error or corruption, upon the other branches of the government, as well as upon the rights of the citizen, to prevent all, all, from being swallowed up by the inordinate power of the legislature. This third and supervising power was not only defensive in its nature, but it was a power to guard the people against hasty and improvident legislation.

Without this power of a veto over the bodies of legislation, in vain may you boast of the independence of your judiciary, and in confirmation point to the fixed tenure of their places, till sixty years, or even for life. Remember that the power over the subsistence, is a power over the will of man. When you have secured to them the tenure of their places, you seem to have provided for their safety because you have placed them in a citadel which cannot be stormed: but yet you have artfully retained in the legislative body, the means of their subsistence, and the power to starve them into submission. Let them venture on the integrity of their conduct to come in collision, or to thwart the legislative will, and attempt to break down some law which may violate the constitution, or have for its object the destruction of the other branches of government, and the grasping at all power, it will be then that the legislative body will show to the judiciary its dependence, and that although holding a citadel which cannot be sacked, yet their subsistence and their existence while there, is at the pleasure of that body which they vainly attempt to withstand. When

such a crisis shall arrive, some modern Cæsar, with a senate at his heels, may control, by his cunning and his influence, the majority in your bodies of legislation, and thus throw down the fabric of your government. I beseech you to preserve the proposed check, and thus provide against the ascendant powers of either corruption or inordinate ambition.

He considered the sheet anchor of our safety to be the wholesome principle that the majority should govern, and to this he would hold.—But the will of the majority was to be fairly expressed by the representatives of the people, in the several departments of our government, and not by the democracy in its collective capacity. Found your government upon equal rights, and extended suffrage. Clothe its officers with all requisite powers, and provide for their direct and immediate accountability to the people themselves. Upon this system, the representatives of the people will rise like the wave of the ocean, which exists for a season, rolls onward until its functions are performed, and then again subsides into the great source from which it originated. There was in this respect a wide distinction between this country and the ancient republics. In the former, the interests and sentiments of the community are represented by delegates—in the latter, the people assembled en masse, to conduct their political affairs.—The fate of ancient republics should warn us against the danger of all democracies. Their liberties were lost by the licentiousness of the people, upon which their governments provided no check. The veto, and final adoption of laws was lodged in the collective mass of the people, and was exercised with that indiscretion and madness, which always characterize such tumultuous assemblies.

It was these popular assemblies where the laws received either the approving voice of the people, or were rejected, that called forth the powers of Demosthenes. These popular assembles were the schools of the eloquence of ancient times, and the causes of their country's ruin. Let us avoid the rock on which other states have been wrecked; and while we manifest a becoming confidence in the intelligence and virtue of the people, let us never abolish those checks, which are necessary to preserve us from the encroachments of power.

His honourable colleague had enumerated several of our sister states, in in whose governments no qualified negative on the acts of the legislature had been provided. The constitutions of those states had been cited as models for our own. But he would ask when these governments were adopted, and what had been their operation? Many of them, like our own, were established, to use the language of his colleague, amidst the noise of musketry and the thunder of cannon. Experience had proved them defective in many important points, and they ought not to be cited as precedents. Among others, the new constitution of Connecticut had been mentioned as an example for us. There was a wide difference between the population of that state and of this. They were emphatically one people, peculiar in their habits, customs, and manners. They were descended from one stock, and were united by an identity of interests and feelings. The people of this state, on the contrary, were descended from different states, and collected together from every country and every nation under heaven. There was an almost infinite variety of interests, sentiments, and feelings in the community; and hence the same government which was adapted to the people of Connecticut, would not answer for New-York. It had been found by an experience of many years, that at times there had been encroachments by our legislature—It had since been charged with corruption. This was a point which he trusted his honourable colleague (Mr. L.) would not controvert; and this being admitted, it would not be denied, that it was both wise and safe to guard against the dangers of such encroachments. In illustration of this, he cited the cases, which had been stated by his honourable friend from Westchester (Mr. Jay,) on the floor this morning, by which it appeared that money had frequently been drawn from the treasury—lands had been conveyed—the school fund meddled with—the attorney-general, and even the governor himself directed in his duties by the concurrent resolutions of the two houses of the legislature. He trembled while he reflected on these alarming strides of power. Such liberties with the treasury and the government,

should never, never, have been permitted, and he hoped provision would be made, which would for ever prevent their recurrence.

Again, said Mr. Tallmadge, Pennsylvania has been cited as authority in support of the proposed amendment. This precedent was peculiarly unfortunate, as that state, after giving the principle in debate, a fair trial, was compelled to change the system. The legislature of Pennsylvania at first consisted of one department, and its power soon became so exorbitant, as to create alarm, and to lead to an amendment of the constitution, and an adoption of the precise principle under consideration. In their first constitution, they had provided for a board of censors, who were to report and determine whether any infractions of the constitution had taken place, and at their first meeting they reported that numerous and flagrant violations had been made by the legislature; but let it be remarked, that not a single encroachment had been made by the judiciary or executive. "But go to the west," says my honourable colleague (Mr. Livingston,) "there you will find wisdom." Yes, sir, go to the west, to those states which have provided no checks upon the omnipotence of the legislature, and it is there that you will find your stop-laws, laws violating private rights, contracts, and in many instances, the constitution of the United States.

Virginia, too had been introduced as a model; and her statesmen and patriots called up in splendid array. But after all, what had been the experience of that state? On this subject he begged leave to refer to the opinion of one of her greatest statesmen, he meant Mr. Jefferson. In his Notes on Virginia, that distinguished gentleman spoke freely of the defects of the constitution of that state. According to him, the government was administered by concurrent resolutions, and the governor was a mere creature of the legislature. If Virginia should ever call a convention to amend her constitution, this feature would undoubtedly be expunged; and yet we were called on to adopt these very defects.

The honourable gentleman from Albany, (Mr. Kent) had spoken feelingly upon the subject of our being about to destroy one of the pillars of our constitution. Such an impression might have gone abroad; but in justice to the committee who had reported the amendment under consideration, he must be permitted to say, that they were unanimous in their determination not to touch one principle of the third section; but only to separate the judiciary from the legislative power. The committee have not wished to innovate upon one principle of the government, but strictly to improve its errors. So far from breaking down the judiciary, they would add to its strength—so far from demolishing our political fabric, they would add to the beauty of the structure.

He (Mr. Tallmadge) concurred in the sentiments yesterday expressed by the gentleman from Albany, (Mr. Spencer,) in believing, that the great departments of governments should be kept distinct, and as independent of each other as possible. The supervising power should be lodged with some depository, who should not be the mere creature of the legislature, but would perform the duty with firmness and decision. For his part, he entertained fears, that our government would be rendered too weak, rather than too strong. [Here Mr. Tallmadge observed, that although he would wish to add a few other remarks, he perceived the hour of adjournment had arrived, and he should not, at that time, trespass farther upon the patience of the Convention.]

The committee then rose, and reported progress; and asked for, and obtained leave to sit again.

Adjourned.

THURSDAY, SEPTEMBER 6, 1821.

Prayer by the Rev. Dr. Chester. The President took the chair at 11 o'clock, when the minutes of yesterday were read and approved.

Mr. Sheldon said, a circumstance had occurred which was not provided for

by the rules of the Convention, and which created some embarrassment in the proceedings. He stated some of the difficulties to which he alluded, and moved an amendment to the 11th rule.

Chief Justice Spencer thought the subject should be referred to the standing committee on the rules and orders of the Convention, which had, as yet, only reported in part. There were some other rules and amendments necessary. The other day a division was taken in committee of the whole. This, in his opinion, was decidedly wrong. Members voted upon propositions, upon condition that certain other provisions should be made to the constitution. It is therefore wrong, that divisions should be taken in committee of the whole; or until all the propositions shall have been discussed, and shall be taken up for final consideration in the Convention.

Mr. Sheldon suggested another amendment, but both were withdrawn; and

On motion of Col. Young, a resolution was adopted, instructing the committee, appointed to draft rules and orders, to report what rules, if any, were necessary for the government of the proceedings of the Convention.

THE COUNCIL OF REVISION.

On motion of Mr. P. R. Livingston, the Convention again resolved itself into a committee of the whole on the unfinished business of yesterday.—Mr. Sheldon in the chair.

Gen. Tallmadge, in continuation of his remarks of yesterday, observed, that when he concluded, they were considering the precedents of Pennsylvania and Virginia, and the defects in the government of the latter pointed out in the Notes of Mr. Jefferson. Virginia has been referred to as the pattern of republicanism: Sir, the constitution of that state requires a large freehold for a voter in any case. No person can vote for the least officer in the government, unless he be a freeholder; and the government of the state is in fact an aristocracy. Efforts, too, often have been made, and are still making, to have a Convention to revise and alter the constitution of that state; but this is unavailing; the legislature, elected by landholders, refuse their sanction; the measure cannot, therefore, be brought about, and the aristocracy continues. An allusion had been made by his colleague yesterday, to the precedents of those states, which have not provided for a qualified negative under any circumstances. Rhode Island, among other states, has been instanced. Sir, look at the history of that government. She has no constitution except a charter, and occasional laws. Look at the paper money and tender-laws once enacted there, and the frauds upon the public—and other acts which one time rendered that government a libel upon the character of that state. Mr. T. well remembered them, and it would also be remembered that they had well nigh overthrown the government—such as it was.

I am to be told, said he, that my argument is founded on the corruption of the legislature; but remember that when I spoke of the legislature, I spoke of of the members as being the representatives of the people. It is not the people themselves, but their agents, which are corrupt—and unfortunately, we have too many facts before us to justify a denial, that majorities in public bodies cannot always be trusted with safety. I will not say our own state affords any instances, either of corrupt, or of hasty, or unadvised legislation. To test the safety and prudence of reposing entire confidence in legislative bodies, turn your eyes to the state of Georgia. It will there be found, that one legislature elected by the people, enacted a law which the next succeeding legislature pronounced to be corrupt, and directed it to be burned by the common hangman. It was not for him to pronounce which was correct. But it abundantly proves the danger to the public welfare in trusting all power to legislatures, without a proper supervising authority. And let it not be said there is such immaculate purity in the representatives of the people. He wished the argument were a true one, but experience forbids us to believe it. We do not ask for a veto as in a regal government; but as our constitution has wisely provided, that our legislature shall consist of two branches, one in which bills generally originate, the other less numerous to reconsider them, and a

third, the supervising power, less liable to encroach upon the rights of property, and the liberties of the people. It is necessary there should be a system of checks and balances, to prevent the legislature from monopolizing all power. Where this is not the case, and where the sole power of enacting laws is lodged with one body, or one individual, there must be tyranny. His honourable colleague (Mr. Livingston) had yesterday invoked 'the majesty of democracy.'—Sir, said Mr. T. I recognize no such majesty. The majesty of democracy reigns not in this republican country; but we have a sovereign people, with whom, of right, all political power resides, and from whom alone it emenates. We have a government of laws, founded on equal rights, and based on the principle of representation. It was the distinguishing character incorporated into our governments, and the great feature wherein ours differed from the ancient republics. The rock upon which they were ruined, was marked on the chart before us—it was our business to avoid it—and the principle of representation must be adhered to as of vital importance. Secure to the people in your constitution, reasonable and proper rights—keep them from meddling with government in their collective capacity—let them enjoy freedom in their agricultural, commercial, and manufacturing pursuits, with the constant accountability of all officers to them, and then you will have a government whose ingredients will be stable and permanent. Without these precautions, we may see that majesty which has been so feelingly invoked—'The majesty of democracy.' It once reigned in Paris. It was the majesty of democracy in the consummation of its mad career, which inscribed upon accountable man, *Death is eternal sleep.* It should be the prayer of his life that no such majesty should ever reign over this now happy land.

His maxim was caution and moderation in approaching the constitution: avoid innovations in its principles. Let the work of our fathers be preserved, after undergoing wholesome amendments. Preserve the principle of proper checks and balances, as provided by them, and you may remedy the defects which experience has pointed out. Suppose for a moment, that the executive possessing this veto, should think proper to suspend the passage of a law and two-thirds of the legislature should be unwilling to pass it. The experience of the community shews, that no essential injury could result from such a suspension. If in the sequel it should prove that it was a wise and salutary law, which was thus suspended, and that the veto was injudiciously exercised, the evil would be only temporary, and the final passage of the law could not be defeated. If it be a bad law, and it be once passed, it can never be recalled—if it be a good one, there will be nothing to prevent its passage, when the representatives shall have been changed by a new election. Sir, suppose the most unimportant case—suppose a turnpike act be passed, and rights and property be vested under it. It was unfortunately passed, but cannot be repealed. But if the executive, by the exercise of his veto had suspended it, where would have been the injury of a temporary delay? And permit me to add, the history of the world will show, that the folly of republics has been an excess of legislation.

He must again urge the necessity of keeping the constitution properly balanced, and avoiding all innovations in its principles.

Sir, what is the amendment offered? It is to change the principle of requiring the sanction of two-thirds to any bill which may be returned with objections, to a bare majority of the whole number elected. The amendment proposed by the committee, he had thought was so plausible, and so just, that it would have been adopted by the Convention without opposition.

Some gentlemen have entered into nice mathematical calculations, to shew that a majority of the whole number elected may possibly be a greater check than two-thirds of the members that may be present, and have gone so far as to look over the journals of the legislature, to ascertain the number of members usually absent.

If what they have told us be true, on ordinary occasions, the veto might be of little use; but let us preserve it nevertheless. In the time of faction, or popular commotion, every member would be found in his seat, and it may then be the means of saving the country.

I hold it not to be an immaterial amendment, for it goes to violate that maxim laid down by all political writers, to separate the departments of government, and guard the one from encroachments by the other—and the consequent introduction of tyranny by the consolidation of all power into one branch. Let us not with sacrilegious hands, prostrate those venerable principles for which our fathers fought and bled, nor demolish those columns in our political fabric, which they have reared.

In conclusion Mr. T. said, there were other views of this subject which it would be proper and right to offer; but he was aware that he had already trespassed upon the time of the committee, and he would forbear to say any thing more at present.

Mr. Van Buren. I had flattered myself, Mr. Chairman, that the Convention would have adopted the revisory power proposed by the select committee, with the same unanimity with which they determined, on Tuesday, to expunge the third article of the constitution, and to separate the judiciary from the legislature. But in that expectation I have been disappointed. Notwithstanding the unanimous recommendation of the select committee, and the able manner in which it has been supported, a powerful opposition to it appears to exist. A proposition has been made by the gentleman from Dutchess (Mr. Livingston) which, from the respectability of the source from whence it emanates, the precedents on which it is founded, and the talents and character enlisted in its support, is entitled to the highest consideration. I shall, therefore, proceed to the discussion, with all the brevity which the importance of the subject will admit, and all the simplicity of which I am capable.

In the course of that discussion, the first question for our consideration, is, whether it is wise and proper that a restriction of any kind should be placed upon the legislative power? On that subject it would seem that little doubt could remain. That a check of some kind is necessary, is a principle that has received the sanction, and been confirmed by the experience, of ages. A large majority of the states in the union, in which, if the science of government be not better understood, its first principles are certainly more faithfully regarded than in any other country, have provided restrictions of this sort. In the constitutions of the freest governments in Europe, the same principle is adopted. It is conceded in both the propositions before the committee.

The one imposes the restriction by requiring two-thirds of the legislature to pass a bill which may have been returned; and the other, by requiring not only a majority of the members *present*, but a majority of all the members elected. It would seem, therefore, that on the general principle that a restriction is proper, we are all agreed; and the question arises, is the amendment proposed by the gentleman from Dutchess more desirable, and better adapted to perform the office intended, than the proposition introduced by the committee? To arrive at a just conclusion on this subject, it will be necessary carefully to consider the design of such a check, and the advantages which are expected to result from it. Its object is, first, to guard against hasty and improvident legislation: but more especially, to protect the executive and judicial departments from legislative encroachments. With regard to the first of these objects—the prevention of hasty and improvident legislation—the system of every free government proceeds on the assumption that checks, for that purpose, are wise, salutary, and proper. Hence the division of all legislative bodies into distinct branches, each with an absolute negative upon the other. The talents, wisdom, and patriotism of the representatives could be thrown into one branch, and the public money saved by this procedure; still experience demonstrates that such a plan tends alike to the destruction of public liberty and private rights. They adopted it in Pennsylvania, and it is said to have received the approbation of the illustrious Franklin; but they found that one branch only, led to pernicious effects. The system endured but for a season; and the necessity of different branches of their government, to act as mutual checks upon each other, was perceived, and the conviction was followed by an alteration of their constitution. The first step, then, towards checking the wild career of legislation, is the organization of two branches of the legislature. Composed of different materials, they mutually watch over the proceedings of each other. And

having the benefit of separate discussions, their measures receive a more thorough examination, which uniformly leads to more favourable results. But between these branches, as they are kindred bodies, it might sometimes happen that the same feelings and passions would prevail—feelings and passions which might lead to dangerous results. This rendered it necessary to establish a third branch, to revise the proceedings of the two. But as this revisory power has generally been placed in a small body, or a single hand, it is not vested with an absolute, but merely with a qualified, negative. And our experience has proved that this third provision against hasty and unadvised acts of the legislature, has been salutary and profitable. The people of this state have been in the habit of looking at the proceedings of the legislature thus constituted, and they have been accustomed to this revisory power. Their objections have never been that this revisory power existed, or that it was distinct from the legislature; but they do complain that it is placed in improper hands; in the hands of persons not directly responsible to the people, and whose duty forbids all connection with the legislature. I am one of those who fully believe in the force and efficacy of that objection.

The council of revision was disposed of by the vote of Tuesday, and I could have wished that all further discussion on the subject of its merits or demerits had been dispensed with; but a different course has been pursued. From the explanations of the chairman of the select committee, the public would infer that we voted for the abolition of the council of revision from feelings of delicacy and tenderness to the judiciary and to shield them from unjust calumny. Sir, my vote was not given from any such motive. I will not vote for the abolition of any article of the constitution out of kindness to any individual. I should be ashamed to have my vote go forth to my constituents upon any such grounds. The council of revision has not answered the purposes for which our fathers intended it. This is the ground and motive upon which my vote was given. I object to the council, as being composed of the judiciary, who are not directly responsible to the people. I object to it, because it inevitably connects the judiciary—those who, with pure hearts, and sound heads, should preside in the sanctuaries of justice, with the intrigues and collisions of party strife; because it tends to make our judges politicians, and because such has been its practical effect. I am warranted by facts in making this objection. If such had not been the case, I should not have voted for expunging the third article of the constitution.

I highly esteem the honourable gentleman from Oneida, (Judge Platt,) who yesterday thought it his duty to raise a discussion upon the merits of the council. I regret that he has done so. [Judge Platt rose and stated, that that part of the subject was distinctly introduced by the gentleman from Dutchess, (Mr. Livingston) and that he felt it his duty to reply. It was *that* gentleman who had given this direction to the debate.] Mr. Van Buren. I was not aware of that fact, but it in no sense changes the character of what I feel it my duty to say. No man on this floor is more averse to a discussion on that subject than I am; but since the example has been set, I shall proceed. I respect the members of the council of revision, and for their sakes, this debate should never have been introduced. It will become our duty to revise that part of our constitution relating to the judiciary, and it is of vital importance to its members, to preserve them free from prejudice.

Sir, have I not assumed the true ground which occasioned the unanimous vote of Tuesday, for separating the judiciary from the legislative department? It needs but a slight view to shew that the operations of the council have been such as I have stated. On this subject I will only call the attention of the committee to two instances. The first, is that to which the gentleman from Dutchess yesterday adverted. I ask the convention for a moment to recur to that lamentable occasion, when the high power of prorogation was exercised by the executive, to check the torrent of corruption, which had set in upon the legislature, and which proved the wisdom and necessity of some constitutional check. This proving ineffectual, every eye was turned to the council of revision, to arrest the progress of the measure about to be adopted. What was their course? The bill which had occasioned that strong exercise of power, was

passed by the council, although there were not wanting in that council, men who were alive to the interests and the honour of the state; the language of the majority was, that the bill upon its face, contained no provision contrary to the constitution, and that the legislature were the judges of its expediency.

Pursue the subject farther. The scenes which passed within these walls, during the darkest period of the late war, cannot be forgotten. It is well known that the two branches of the legislature were divided; while in the one house we were exerting ourselves to provide for the defence of the country, the other house were preparing impeachments against the executive for appropriating money without law, for the defence of the state. But the effort was unavailing. An election intervened, and the people, with honourable fidelity to the best interests of their country, returned a legislature ready and willing to apply the public resources for the public defence. They did so. They passed a variety of acts, called for by the exigencies of our country. But from the council of revision were fulminated objections to the passage of those acts—objections which were industriously circulated throughout the state to foment the elements of faction. Beyond all doubt, at that moment, was produced the sentiment which has led to the unanimous vote to abolish the council. The legislature had exerted themselves in the public defence; and the object of these objections was to impress the public mind with a belief that their representatives were treading under foot the laws and constitution of their country. The public voice on that occasion was open and decided; and it has ever since continued to set in a current wide and deep against the council. In making these remarks, I disclaim all personal allusion to the author of those objections. I entertain for him the highest respect. As a judicial officer, he is entitled to great consideration, and I should esteem his loss from the situation which he fills, as a public calamity.

Mr. Van Buren again repeated his regret that this discussion had been called forth, as the constitution of our judiciary is to be reviewed. But he could not consent, in abolishing the council, to shed tears over its ruins, or pass an eulogy on its character. By doing this, and by the course of some gentlemen's arguments, we are mourning over our own acts, and preparing the public to distrust our sincerity. We ourselves are undermining what we ourselves have done.

To return to the argument—That legislative bodies are subject to passion, and sometimes to improper influence, is not to be denied. Their acts are frequently so detrimental to the public interest, that the united voice of the people, calls for their repeal—a striking proof, if proof were necessary—that legislators are but men, subject to all the infirmities and frailties of our nature. The cases cited by the gentleman from Dutchess (Mr. Tallmadge) are strong and directly in point. They show, that the representatives of the people do sometimes err. They show also the necessity of preserving a controling power—And what is the consequence of placing such a power, upon the footing recommended, by the report of the committee? It may suspend for a time the operations of the legislature. It may prevent the passage of a bad law, but never can defeat the passage of a good one. If a good law be returned with objections, it will come before the people, they will pronounce upon it, and return representatives, who will insist upon its passage. If it be a bad one, the revisory power will be justified; delay, therefore, for the most part, will be the only consequence of the check, and that will be followed, by all the benefits of further discussion, and a fuller understanding of the subject. But the advantages of such a power, are not confined to its exercise. I concur with my honourable friend from Oneida (Judge Platt) as to its silent effect. The advantages arising from its silent and unseen operation, are doubtless greater than those arising from an exercise of the power. A bare majority is not always an indication of honesty, or that a favourite measure is correct. Great weight of character and powerful talents are often embodied in the minority. Many laws pass by a bare majority; but when there is a qualified negative upon the acts of the legislature, the gentlemen of the majority, aware of this power, may be restrained from passing many improper bills. I have no doubt but considerations of this kind have influenced the conduct of legislators for years past. In every point

of view, whether from our own experience, or the experience of other states, we discover this liability of legislators to act hastily and inconsiderately. The judgments of most reflecting men unite in the expediency of some check like that proposed by the committee; and when it can be productive of no other effect than to suspend the passage of a bill, and thereby enable the people to express their will upon the subject, it is to me, sir, matter of surprise, that so much hostility should be shewn to the report of the committee.

But, sir, the prevention of party legislation is not the only, nor the most important reason, why we are disposed to give this power to the executive. Our government is divided into separate and distinct departments—the executive, judicial, and legislative. And it is indispensable to the preservation of the system that each of these departments should be preserved in its proper sphere from the encroachments of the others. It is objected, however, to vesting the power in the hands of a single individual, on account of the liability of man to the abuse of power. But an instance of the abuse of power thus confided, has never existed, where it did not defeat the very object for which it was abused.

Distinct branches are not only necessary to the existence of government, but when you have prescribed them, it is necessary that you should make them in a great degree, independent of each other—No government can be so formed as to make them entirely separate; but it has been the study of the wisest and best men, to invent a plan, by which they might be rendered as independent of each other as the nature of government would admit. The legislative department is by far the strongest, and is constantly inclined to encroach upon the weaker branches of government, and upon individual rights. This arises from a variety of causes—In the first place, the powers of that department are more extensive and undefinable than those of any other, which gives its members an exalted idea of their superiority. They are the representatives of the people, from which circumstance, they think they possess, and of right ought to possess, all the powers of the people. This is natural and it is easy to imagine the consequences that may follow.

This is not all—they hold the purse strings of the state; and every member of all the branches of the government is dependent on them for his subsistence. You have been told, and correctly told, that those who feed men, and enjoy the privilege of dispensing the public bounty, will in a greater or less degree influence and control them. Is it unreasonable, or improbable, to suppose, that power, thus constituted, should have a tendency to exert itself, for purposes not congenial with the true interests of the other branches of government? The gentleman from Dutchess (Mr. Tallmadge,) referred to some striking illustrations of the conduct of legislative bodies, in this particular, which show that power thus vested is too frequently abused. The case of Pennsylvania is entitled to our serious consideration. In 1783 they provided a board of censors to examine into the proceedings of their legislature. Those censors, though some of them had taken part in the proceedings of that body for years, pointed out and reported a long list of legislative infractions of the constitution. In 1790 a Convention was called, which formed a new constitution. That body, after full and deliberate discussion, inserted in their constitution that very article which has been reported as worthy of a place in ours. That Convention was composed of the wisest and best men in the state, many of whom assisted in forming the constitution of the United States. It contained Mifflin, M'Kean, Addison, Gallatin, and a long list of other statesmen, distinguished for their talents, wisdom, and experience. The people of Pennsylvania, at the adoption of their first constitution, did not believe in the principle for which I am contending; but experience soon taught them that they were wrong. The check proposed in 1790 was adopted, and the legislature has since been been kept in the line of their duty. In my view, the conduct of Pennsylvania affords the strongest testimony in favour of adopting the course recommended by the committee; and I cannot but believe, that if the proposition of the gentleman from Dutchess (Mr. Livingston) should prevail, New-York would experience the same evils, and be compelled to resort to the same measures, to get rid of the experiment.

The gentleman from Dutchess (Mr. L.) has referred us to Virginia, and descanted on the number, wisdom, and integrity of their statesmen. Mr. Van Buren would assent cheerfully to all he had said upon that point. In that number was included the political father of the state, Mr. Jefferson. No man had more experience in the government of that state; no one had more fearlessly pointed out the defects of their constitution. Unfortunately, it imposes no check upon the legislative power; their governor is elected by the legislature, and of course, is but a creature of that body. And, sir, (said Mr. Van Buren) at this moment it is a source of regret to the best statesmen of Virginia, that they have no check. Mr. Jefferson, in his Notes on Virginia, expresses himself thus:—

"All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason, that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. *But no barrier was provided between these several powers.* The judiciary and executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If therefore the legislature assume executive and judiciary powers, no opposition is likely to be made; nor if made can be effectual; because in that case, they may put their proceedings into the form of an act of assembly, which will render them obligatory on the other branches. They have accordingly *in many* instances *decided rights* which should have been left to *judiciary controversy*; and *the direction of the executive, during the whole time of their session, is becoming habitual and familiar.*"

Here, sir, we have the opinion and the complaints of this great man. The legislature had usurped the power of all the departments. The people had declared that those departments should be independent, but they deceived themselves by trusting to parchment regulations. And the gentleman from Dutchess (Mr. Livingston) wishes us to go on, and in the same manner invest the legislature with all the powers of the people.

But this is not all. That there may be no mistake in the views of this distinguished man, I think it proper to state, that in 1783, it was contemplated to call a Convention to amend their constitution. Mr. Jefferson, with paternal solicitude for the interests of the state, framed a constitution, to be submitted to that body. It may be found in the appendix to the Notes on Virginia. It contains a provision, declaring that the governor, two councillors of state, and a judge of each of the superior courts, should be a council to revise all bills passed by the legislature, and that a bill when returned by the council should not become a law unless *two thirds* of each house should concur in its passage. Here, then, we have his deliberate opinion, that an efficient check is necessary upon the legislative power. And I have no doubt that should there ever be a Convention in Virginia to revise their constitution, such a provision would be one of the first to be adopted. But it is undeniably true, and so admitted by Mr. Jefferson, that Virginia is emphatically the land of steady habits, and although there are many defects acknowledged to exist in their constitution, still their reluctance to introduce a change, has hitherto prevented the call of a Convention.

The gentleman from Westchester (Mr. Jay) has presented a long list of instances where the legislature have encroached upon the executive, by concurrent resolutions; a striking proof of the truth of my remarks. And, sir, if you

provide no check, the legislature can go on to strip the executive of all his power. Then is it not necessary, for the well being of government, to vest a salutary check in some other department? A contrary doctrine, I am satisfied, is dangerous and absurd. In the constitution of the United States, and in several of the other states, you have a provision precisely similar to that for which we are now contending. Although amendments to the federal constitution have been proposed from almost every part of the union, still against that provision we have never heard a murmur. That provision was avowedly copied from the constitution of Massachusetts, where its utility has never been questioned. Maine lived under it for nearly forty years, and on being separated into an independent state, has adopted the same provision. The late Convention in Massachusetts affords one of the strongest evidences that a patriotic people can give, in favour of this provision. This Convention was composed of their wisest and best men, selected without reference to party, and embracing almost the whole body of the talents of that state. They were two months in session, and in the course of all their debates, not a word of complaint was uttered against this part of the constitution.

Sir, such is the superior force and influence of legislative power—such is the reverence and regard with which it is looked up to, that no man in the community will have the temerity, on ordinary occasions, to resist its acts, or check its proceedings. I cannot illustrate this position more strongly than by a reference to the constitution of England. There the executive is a branch of the legislature, and has an absolute negative. Surrounded as he is with prerogative, and placed far beyond the reach of the people, yet since the year 1692, no objection has been made by the king of Great Britain to any bill presented for his approbation. Rather than produce the excitement and irritation which, even there, would result from the rejection of a bill passed by the parliament, he has resorted to means which have degraded the government, and dishonoured the nation, to prevent the passage of bills which he should feel it his duty to reject. In the declaration of independence, in the catalogue of wrongs under which our fathers had been suffering, one of the most prominent was, that the king had exercised his prerogative, and had refused his sanction to salutary laws. Gentlemen may therefore rest satisfied, that very little danger is to be apprehended on this subject. There is, besides, a proposition to reduce the term of service of the governor, from three years to one. Is it possible, then, that when thus made immediately responsible to the people, there can exist any well founded causes of alarm?

I hope, sir, we shall adopt the report of the committee, for these, and many other reasons which I shall not tire the patience of the committee by detailing. It is a common remark, that in alterations in government, people are apt to go from one extreme to the other. And, sir, are not gentlemen now going upon extremes? We have abolished the council of revision, and weakened the revisory power, and by the amendment offered by the gentleman from Dutchess, (Mr. Livingston) we destroy it altogether. True, the governor can return a bill with his objections. But what will it avail? A bare majority can pass the bill notwithstanding, and as his reasons will probably be those which the legislature have already considered, can it be believed, sir, that his recommendation will have any effect? Can it be supposed for a moment, that the members of the legislature would to-day record their names on the journals in one way, and to-morrow record them in a different way? And will not the governor be restrained from exercising that power, when he knows it is vain and idle?

We have heretofore had the revisory power in the hands of the judiciary and executive united; and now, because the people call for its separation, shall we destroy it altogether? Shall we go to the other extreme, and have no restriction whatever? I cannot perceive the benefits to result from such a course; I am persuaded of its impropriety. We have decided on abolishing the council of revision, in a manner that will redound to our credit; and I had flattered myself from the promptness with which that decision was made, that the passage of the amendment would have followed without opposition. Let us not agitate and excite the fears of the community. They have expected an alteration of the legislative check, but not an abandonment of the principle. A portion of the

people of this state, believe the council of revision to have been wisely instituted, and of great practical utility. There are others, who think a change is necessary, and that the judiciary should have no connection with the other branches of government. Adopt the proposition of the gentleman from Dutchess, and what will be the consequence? You alarm those two great bodies of our citizens, and hazard the rejection of your proceedings. If we would inspire the people with confidence in our acts—if we would ensure their approbation—if we would effect those wise and salutary amendments which the public voice and the public interest demand, we should beware of vibrating to extremes, and of introducing an innovation so hazardous and unexpected, as that which we are discussing.

Mr. King. Although the subject has been ably discussed, I ask the committee to allow me to state, a little more at large, an important principle, which no one denies, and on the right application of which the question turns.

All admit that the source of our free government is found in the people, who have established a representative republic, the powers whereof are deputed to agents, and are never exercised by the collective body of the people. Accordingly the people by the constitutional act, have assigned to several great departments, such portions of power as under certain limitations, are deemed sufficient for the purposes for which governments are founded.

The people reserve to themselves the appointment, directly or indirectly, of all the agents, or deputies, by whom the government is to be administered, taking themselves no direct agency in such administration.

Thus the constitution has established a legislative department who are to make laws for the general welfare; provided that the same be not contrary to the limitations imposed on the law makers.

In like manner it has established an executive department, and a judicial department: the one to interpret, and the other to execute the laws.

Each of these departments possess separate and independent powers, and cannot lawfully interfere with the duties of the other.

These powers are not only separate and independent, but they all are alike derived from the people, and created for their benefit.

The legislature is composed of deputies of the people: but they not more so than the executive and the judiciary. It must therefore be an error to suppose that the legislature are the people; for the executive and judiciary in their several departments, may as well think and call themselves the people, as the legislature within their department, may consider and call themselves so.

The legislature and the executive are elected by the people for fixed periods, and at the expiration of their appointed terms, return to the people, who rechoose them, or elect others in their place. The judiciary is not elected by the people, but appointed in the manner that they have provided by the constitution;—and instead of a short and fixed term, they hold their offices during good behaviour, or until a certain age.

The legislative department are the most numerous. They impose taxes, establish all salaries, including those of the other departments, and possessing other great powers, are first in importance among the departments. They moreover keep watch over them, and for the misdemeanors of one, and the misbehaviour of the other, may prosecute, try, convict, and remove the executive and judiciary from office.

Not only the greater power of the legislature, but also the superintendence and apparent control which they have over the other departments, give them a pretension to the highest rank. Their intimate communication with, and residence among, the people, also impart to this department great strength, and naturally enough inspire them with more confidence in their own discretion and wisdom than is felt by any other department.

For these considerations, and in order to preserve a poise and balance between the great departments of government, the people have by the constitution, established a body of magistrates called the council of revision, and given to them power, and made it their duty, to object to bills passed by the legislature, in violation of the constitution, or of the public good. And no such bills can become a law unless repassed by the legislature, by two-thirds of the members of each branch.

The powers and duties of the council of revision are established by the people, in order to superintend and control the acts of the legislature.—Experience has shewn that without such control, the legislature is too prone to overstep the limits of their own powers, and to encroach upon, and in the course of time, to swallow up the legitimate powers of both the executive and judiciary.

It is not now fit,—it is too late, to enter into the reasons which have produced a general opinion throughout the state that the present council of revision should be superseded; the Convention having *unanimously* voted to abolish it.

This opinion and vote, have in no sort been influenced by any doubt concerning the importance and necessity of a revisionary power, but from the conviction that the judiciary should no longer be vested with any portion thereof.

The report of the committee proposes that the power heretofore vested in the executive and the judicial departments, should henceforth be transferred to the executive alone. The amendment of the member from Dutchess, while it assents to such transfer, proposes that the exercise of the power by the executive, should have no other effect than to require a majority of all the members elected to the senate and house of assembly, (instead of two-thirds as heretofore, of the members of the respective houses) to pass any bill to which objections shall have been made.

In favour of this amendment, it is urged that a number of the states have omitted altogether to establish a revisory power, or have given to the objections of such body, the power of requiring a majority of the whole members instead of two-thirds of those present, to repass a bill to which objections shall have been made.

And that the vesting so great a power as the report proposes in the executive alone, may make it too formidable, and seems to imply that a single individual may possess more wisdom than a majority of the legislature.

In respect to the constitutions of other states, it may be answered, that a plurality of the state constitutions provide a partial negative, equivalent, or nearly so, to that proposed by the report; and examples might be mentioned of the irregular proceedings of certain states where no power, or an inefficient one, has existed, to check certain proceedings of the legislature.

The recent constitution of Connecticut, in which the revisionary power is similar to that proposed by the member from Dutchess, is urged as an authority, and recommended to our imitation. But, as has been suggested, it will be recollected that Connecticut is not a large state—that her numbers are not great, nor her territory extensive—that her ancient manners remain without much alteration, and her population being unmixed, is without the collision which a population suddenly collected from different quarters will present.

As respects the power of the executive, the object of placing the same in this department should be rightly understood. To exhibit the greatness or comparative importance of the executive can never be a motive with the people to give large powers to this department. But as very large powers are given to the legislature which may be, as they have been, abused—the people for their own security, and in order that the powers placed by them in the executive and judiciary may not be trampled on, will vest in the executive a power that may be adequate to protect the people, as well as the judiciary and the executive departments, against the irregular acts of the legislature.

It is therefore for the safety of the people, and in order that the three departments of government which they have established, may be protected against the unjust proceedings of the legislature, that this power is proposed to be lodged in the executive.

It is not the man who may chance to be governor, but the people themselves, who, through him, interpose their authority to check the irregularities of the legislature.

Will it be either respectful, or safe, upon such interposition, for the legislature to repass the bill to which objections shall have been made, by a bare majority of all the members? Will not such provisions prove ineffectual, and operate to draw the executive into contempt, instead of proving a check upon the irregularities of the legislature?

This is not a new question, but has been often in review: and the princi-

ples, and exactly the same provisions, as are contained in the report before us, are contained in the constitution of the United States:—every part of which was fully and carefully considered, and has been confirmed and adopted by every state in the union. Though difficulties occurred in the first formation of this constitution, and mutual concessions were found necessary, yet the vesting in the person of the president the power to object to bills, and requiring the consent of two-thirds of the members of both houses of congress to their afterwards becoming laws, was not matter of compromise, but was consented to with as little scruple, and as great unanimity, as almost any other article of the constitution.

The authority of the constitution of the United States, to which all the states which may have different state constitutions, have unanimously consented, outweighs that of certain of the states, that, which from peculiar circumstances, may have either omitted or diminished the revising power. Is it then fair to say, there has been a diversity in opinions of the states, when in fact all have approved of the provisions of the report?

The example of the United States seems to be more fit for our imitation than that of any single state; especially of one limited in territory, as well as in numbers.

The state of New-York is already a great state; exceeding in its population any other state in the union. Its territory is large and fertile—its commerce extensive, its manufactures respectable, and its wealth and resources not inferior to those of any of her sister states.

If such be our condition, and such the government which we require at this time, will not the future demand an equally vigorous one? Will the simple rules that may be useful and sufficient in one neighbourhood, be adequate for the government of this great state, when it shall have arisen to that elevation, to which it is advancing with its mixed population, and its diversified interests?

These are considerations which call for provisions that shall prove sufficient not only to maintain a due balance between the powers of the great departments, but to protect the people from their united usurpation.

It is well to remember that we are called to act, not only for the present time, but for futurity, and that what is passed, is in no other respect to be regarded, than that our experience should be united with our sober reflections in debating and settling the provisions which are to be proposed in amendment of the constitution.

Instead of danger from the power proposed by the report to be vested in the executive, is there not much reason to fear, that the power will be more rarely used than it ought to be?

Mr. Brooks. I do not rise to enter into a discussion of the subject now before the committee. It has been already ably debated; and my only object is to give some explanation of the vote which I am about to give. The honourable chairman of the committee, (Mr. Tallmadge,) to whom this subject was referred, has stated, that the report of that committee was adopted by them *unanimously*.—That statement is correct; so far as it relates to the general subject matter of the report; the object of which was to furnish a substitute for the third article of the constitution.

As to the abstract question of the extent of the power to be given to the executive, the select committee were not unanimous. Before I entered into the deliberations of that committee, I was opposed to giving to the executive the power contemplated in their report, and proposed an amendment. I have not since discovered any good reason for changing my opinion, and shall vote for the amendment proposed by the honourable member from Dutchess.

Mr. Tompkins, (the President.) He concurred fully, he said, in the propositions laid down by the honourable member from Queens. It was true that the people were equally represented in all the departments of government, the legislative, executive, and judicial: and he concurred also in the propriety and necessity of supporting and maintaining each in the full, safe, and independent exercise of the power and authority delegated to them respectively by the people. But, as to the means by which this was to be done, he had formed a different conclusion. The reasons, by which his mind had been influenced, had led him to a different result.

How was this provision introduced into our constitution? It was considered by a majority of the framers of the constitution, that a veto, even qualified in its character, placed in the hands of the executive alone, was an odious relict of royalty; that it was unsafe and unwise to place it there; and that it was therefore that the chancellor and judges had been associated with him; and the reasons why, even thus constituted, it had found a place in our constitution, was owing principally to the peculiar state of the times, and of the country, when it was framed. Our people had not yet been accustomed to self-government, and many of them retained strong predilections for the forms and checks of the government under which they had hitherto lived. The Convention, therefore, thought it prudent, in some respects, to assimilate our new government to that. They were apprehensive, if they departed too widely from what the people had been accustomed to, and introduced alterations and innovations very glaring, that they would alarm the jealousy and prejudices of some who were otherwise well disposed to the cause of freedom, and particularly some men of property and influence. A check, such as was contemplated by the report of the committee, he considered unnecessary. There can be no use for a veto on the passing of laws, but to prevent violations of the constitution; and for this purpose your judicial tribunals are sufficient. If laws, encroaching on the independence of the executive or judicial departments, should be enacted, or such as violated any private rights, they would be void, and it would be in the power of the courts to declare them so.

The constitution, as framed in 1777, had been a great blessing to the state; and for a time, it had proved sufficient for the beneficial purposes of government. Its defects had been gradually unfolded by experience, and a change of circumstances; these defects had become more and more manifest from the collisions and conflicts of party; and the time had arrived when it was expedient and proper that the people should mount their legitimate thrones, take the power in their own hands, and expunge from the constitution its imperfections and impurities.

We have been frequently and truly told, that the departments of government ought to be kept separate; and, from the correctness of this principle, a very strong argument against the judges being members of the council of revision, has been derived; because, as members of that body, they constituted a part of the law-making power. Why, then, transfer this veto to the executive alone? Is it not as dangerous to blend the executive and legislative branches together, as to blend the judiciary with the latter?

The framers of our constitution meant, as he believed, to limit the veto of the council of revision to constitutional objections. This must appear obvious, as well from the language of the constitution, as from the fact that the chancellor and judges were constituted members of that body; they were placed there because the terms by which they held their offices render them an independent body; but more especially, and principally, on account of their supposed legal acquirements, and that they, therefore, would be most capable to judge of the soundness of constitutional objections. Another reason for believing that the framers of the constitution meant thus to limit this power, was the information he had received from those who had been members of that Convention. A different construction had indeed been given to this article of the constitution, and that the council of revision had the right to object to laws which they might deem inexpedient and contrary to the public good; and it was the consequences which had grown out of this construction, which had alarmed the people. The council had now in fact become a third branch of the legislature, with a control equal to two-thirds of all the representative branches; and it was, therefore, that its abolition has so loudly been called for.

In speaking of the conduct of that body, he did not mean to allude to recent years or any particular members; he had reference to their conduct for a great many years past, and implicated himself among others who had belonged to that body; he had been a member of it for three years as a judge of the supreme court, and ten years as governor of the state; he had in common with others probably mingled political considerations with the proceedings of that body, without being conscious of it. He was willing to take upon himself a full share of blame, and acknowledge an equal share of frailty with others.

This latitude of construction having been given to this power, it early began to mingle with the political concerns of the state. There has been no instance in thirty years past, where party has made its appearance in the two houses of the legislature, but what it has also been seen in the council of revision.

The first instance he should notice, where devotion to party had marked the conduct of that body, was in relation to a law for taking a census of the people of this state; it was many years since, but he did not recollect precisely how long. A majority of the people of the western district were at that time in favour of the then dominant party; its population had increased infinitely more rapidly than in the old parts of the state. The party in power not deeming themselves perfectly safe, was desirous of strengthening their interest by increasing the representation from that district; and this could only be done by having a census first taken on which to make a new apportionment. The constitution provides that a census shall be taken once in seven years; this period of time had not elapsed since the last census; and the question arose whether a new census could be taken before the termination of the seven years; the legislature passed a bill directing the census to be taken, and the council of revision, when called upon to revise this bill, said that the constitution made it imperative to take a census once in seven years, but did not prohibit its being taken oftener; *but that the legislature might, if they thought proper, direct it to be taken every year*, at any periods within that time.

That article of the constitution which provides for the election and distribution of senators, empowers the legislature from time to time to divide the state into such other districts and counties, as they should deem proper, and accordingly, for many years afterwards, and subsequent to the amendments of 1801, the legislature, without objections on the part of the council of revision, did alter the districts and counties from time to time, without reference to the periods of taking a census. But, on a subsequent occasion, and he believed in 1809 or 10, it was proposed to alter the bounds of the four great districts, or some of them; and although it had before been conceded in practice, that these districts might be altered at any time, and did not depend on the taking or not taking a census, yet because the alteration then contemplated, excited high party feelings, and was supposed to operate against the interest of the party to which a majority of the council of revision were attached, they returned that bill *with the objection that no alteration could be made at any other time than immediately on the return of a census.*

But another and more alarming instance of encroachment on the part of this body, (the council of revision) was in 1812. The legislature passed a law providing for the payment of the two additional judges of the supreme court, if the excutive and council of appointment should appoint them. The council of revision objected to the bill. The objections they returned, were read by Mr. T. and are as follows:

Because the constitution having recognized the supreme court, in its organization and powers, as existing under the colonial government, derived from those of the English common law courts of king's bench, common pleas and exchequer, in none of which courts, colonial or English, have the number of judges at one time exceeded *five*, has thus imperatively fixed the number as the common law maximum; incapable of being exceeded but by an express act of the legislature, in conformity to the declaration of the constitution, that such parts of the common law of England as composed part of the law of the colony, should be and continue the law of the land; subject to such alterations and provisions as the legislature of this state should from time to time make concerning the same.

By this they in fact assumed upon themselves the right to control both the appointing and legislative powers. The execution of the laws was entrusted to the executive, to whom, subject to the veto of a council of revision, and the refusal of the legislature to appropriate the pay of judges, it appropriately belonged. But the chancellor and judges in the council of revision, as appears by the objection and the vote upon it, were determined to arrest the constitutional authority of all the other branches of the government, and thus in effect to add to their powers, already enormous by latitude of construction, the more

dangerous control of their own number, unless two-thirds of the whole legislative representation of the state could be obtained to counteract them. It was at a time, too, when the state was convulsed by party spirit, when the attention of the people was diverted from other subjects by the discussion and agitation; when the prorogation of the legislature and the imputations of bank speculation and corruption absorbed their undivided attention; and it was therefore believed and avowed in the council, that this was a suitable time to take into their own hands and control the limitation of the number of judges, and of course members of the council of revision. The reasons they assigned, no one will now contend had any weight in them; they were in fact trifling, and insulting to the good people of this state. What! the common law of England limit the number of judges of the supreme court of this state under its constitution? But even this reason was not founded in truth, the common law does not in England place a limit on the number of their judges, and this was made to appear to the members of that council of revision, by referring them to the opinion of judge Blackstone in his commentaries, that there even it depended on the executive authority alone. But again, if the common law of England had put a limit to the number of the judges of their *respective courts*, that was not and could not be applicable to us. In our supreme court was united, as the objection itself admits, the power and jurisdiction of several of their courts.

It was in consequence of these and various other extensions of authority and control on the part of this body, that they had become an alarming aristocratic branch of the government, and had lost the confidence of the people. It is for these reasons, and numerous other acts and usurpations of the same character that might be assigned, and not for the reasons assigned by the chairman of the select committee, that he had voted to abolish this dangerous feature of the constitution.

If this state of things were to exist for an indefinite period; if the judges retained their present tenure, and irresponsibility to the people; if they preserved the control and destiny of our citizens in life, liberty, and property, in their appropriate judicial department, and in the court of the last resort; if they continued to mingle, in their capacity of members of the council of revision, in the party dissensions and collisions of the day; and were guided by party considerations in the decision of the great political measures which had agitated the community, as they had invariably done for many years; if the construction they had established, of giving to themselves the entire powers of legislation, except in originating bills, to the controling both branches of the legislature to the extent of two-thirds of the whole representation of the state; if they should be tolerated as they had been in the limitation of their own number; he would venture to predict, that the era was not far distant, when the judiciary and its satellites would scale the ramparts of the constitution, and not only subjugate other departments of the government, but prostrate the liberties of the good people of this state, for whose freedom and safety it was reared.

He had a high respect for the judicial tribunals of the state, and could with sincerity avow, that with a more enlightened, upright, and dignified body he had never been associated, than the judges of the supreme court in their appropriate sphere: but he could allege with equal sincerity, that he had never been placed in a body more devoted and firm in party, and political controversies, when they manifested themselves in legislative proceedings. He therefore desired to preserve their judicial purity by abstracting them wholly from legislative and political concerns, and devoting them solely to the interpretation and enforcement of the laws enacted by the proper departments.

It was not the fault of the judges that they had become involved in political concerns, and had mingled with the party contests which had agitated the state for the last thirty years. It was their situation as members of the council of revision, which had dragged them into these contests, and had made them partizans in them.

The object of the prorogation had been in some measure misunderstood by the gentleman from Otsego. The conduct of members of the council of revision had more influence in producing that measure than the honourable gentleman supposes. An auxiliary cause was the prevention of the appointment of two

additional judges of the supreme court then contemplated. The appointment of these judges was zealously urged for the purpose of acquiring a majority in that body friendly to the party in power, and for the special purpose of preventing the passage of a particular law incorporating a bank in New-York. He feared, at the time, that a measure of this kind would prove fatal to the best interests of the state, by increasing the number of judges for temporary and party purposes; and, therefore, determined to risk the consequences, as regarded himself, and to prevent the adoption of that measure; and it was partly to arrest this scheme, that he took upon himself all the responsibility, and subjected himself to all the odium that might follow a step calculated to excite so much feeling and resentment, as a prorogation of the legislature.

He was not, he said, opposed to a negative on legislation, but could not consent to place it in the hands of the governor alone. If other men could be associated with him, with a stable tenure of office, respectable for talents and information; and who were not liable to the same objection as were the present constituent members of the council of revision, he should be decidedly in favour of such a negative. The opinion of Mr. Jefferson, which had been read from his Notes on Virginia, so far from sustaining the gentlemen in the inference they have drawn from it in favour of clothing a single individual with the power, was in corroboration of vesting this power in a tribunal, in which the governor should preside with learned, permanent, and independent characters associated with him. It was not proper to confide it to the governor alone, because he might not always be a professional man, or acquainted with the interpretation and construction of statutes, treaties, or constitutions, and therefore not the most competent to judge whether bills did or did not infringe the constitution, or cardinal principles of government.

It is said that legislative bodies are liable to act hastily and unadvisedly. Why more precipitate than the governor? Senators are elected for four years, and the governor for three only, and a committee have already reported in favour of even a less term. Has a governor, as such, more wisdom than he would have as a senator? It appears by the statement made by the honourable member from Oneida, that the governor, fortified by the wisdom of the whole judiciary, has made more hasty and unadvised objections in proportion to the number of bills objected to, than have the legislature passed unadvised bills in proportion to the number they have passed. A man's sense and intelligence did not depend upon the title or dignity of office, and he could not be supposed more likely to act hastily and unadvisedly in one office than another.

The conduct of men depends upon their heads and hearts, not their stations; if the former be correct, the people have nothing to apprehend from them in any station; but if these be bad, the people have every thing to fear from them in every office. He could not see the argument drawn from the precedent in the United States' constitution, in the same light with the gentleman from Queens. That was a constitution which had grown out of a compromise of conflicting interests, and therefore it ought not to be considered that its provisions were all such as commanded the assent and approbation of all. Would several provisions of that instrument have been incorporated, had New-York alone been represented in that Convention? Certainly not. Besides, the constitutions of the states then represented, had been formed at the moment of emerging from colonization to an arbitrary government, and which had therefore generally incorporated this feature in their state constitutions; and it was natural, that with no other examples or experience before them, they should make the constitution of the union comport in this respect with their own state constitutions.

Mr. Van Vechten. The injurious deduction against the council of revision, which has been drawn by some gentlemen from the unanimity of the Convention in favour of the resolution for its abolition, seems to render it necessary, for those who do not assent to that deduction, to state the reasons for their vote—I shall therefore briefly give my explanation on the subject.

I did not vote for the resolution from motives of courtesy to the judiciary, because the duties of the council are of an unpleasant nature, and the judicial members desirous to be released from them. It does not accord with my views

of propriety, to exonerate public functionaries from important duties on the ground of personal accommodation.

Nor did I vote for the resolution because I disapproved of the judiciary being charged with the duties assigned to the council. On the contrary, I consider it a wholesome provision, calculated to give to the qualified negative, on the law-making power, a sure and salutary operation. This opinion is justified by our experience since the establishment of the constitution, as the gentleman from Oneida (Mr. Platt,) has clearly shown. Nay, the legislature, by an almost uniform acquiescence in the objections of the council, has recognized the wisdom of its proceedings.—For, of one hundred and twenty-eight cases in which bills have been objected to, there are only seventeen in which the objections did not prevail.

My only reason for agreeing to abolish the council, is because the firm and faithful performance of its duties, on some occasions, has produced great party excitements, and much clamour against the judiciary. Such clamour, stimulated and extended by the exertions of a powerful party, may, in a degree, impair the confidence of the public in the rectitude and impartiality of the judiciary. Party spirit is not likely very soon to subside in this state—There appears, therefore, to be no other course for preserving entire confidence in the judiciary, than to remove from it the duties of the council. This impression has turned my vote in favour of the resolution for its abolition. But when that resolution was unanimously adopted, I did believe, that the organization and proceedings of the council had no connection with the substitute reported by the select committee for the third article of the constitution, or with the modification of that substitute moved by the gentleman from Dutchess (Mr. Livingston.)

It seems, however, that other gentlemen think differently; for the wisdom of its organization, and the merits of its proceedings have occupied much of the time of the committee during the present discussion. It will, therefore, not be deemed improper in me, to notice some of the remarks which have been made on these subjects.

The gentleman from Otsego (Mr. Van Buren,) considers the organization of the council objectionable, because the judiciary is independent of the people. The force of this objection, I must confess, does not strike my mind. It appears to me that the independence of the judiciary gives to the restraining power, on hasty, intemperate, and irregular legislation, its greatest energy: and the wisdom, sound discretion, intelligence, and weight of character appertaining to the judiciary, combine public security with energy in the council.

The gentleman from Richmond (Mr. Tompkins,) seems to admit, that heretofore, when the state was in a great degree exempt from the violent agitations produced by the ardent collision of political parties, the operations of the council were salutary—but he alleges that during many years last past, its proceedings have sometimes been directed to subserve party purposes; and he has added the grave charge of usurpation against the council.

The first allegation I appehend is levelled, not so much at the wisdom of the organization of the council, as at the individuals who composed it—for the gentleman should remember, that it is not the fault of the constitution, if public functionaries misuse their power. It is to be feared that the baneful influence of party spirit has not unfrequently been felt in every department of the government, and according to the gentleman from Dutchess (Mr. Livingston,) this is no evil, for he seems to hail its existence as the genius of republicanism. Is it, then, surprising, that when party jealousy was wide awake, and the exercise of the objecting power by the council, created obstructions to party views and measures, the purity of the motives of its members, (who are men of like passions with ourselves,) should be suspected by the supporters of such views and measures—for jealousy naturally begets suspicion, and suspicion inclines the mind to the belief of what we suspect. But is such a belief evidence? Does it prove that any member of the council has ever been influenced by party motives when performing his duty in that department? The objections of the council, and the reasons assigned to support them in every case, are on record; and to the record we should look for the evidence by which its members are to be judged.

The charge of usurpation made by the gentleman from Richmond, (Mr. Tompkins,) rests upon an assertion, that the objecting power of the council is limited by the constitution, to bills inconsistent with the spirit of that instrument. If he be incorrect in his opinion on that point, his charge of usurpation is manifestly unfounded. What is the language of the constitution on this subject. "Whereas laws, *inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: Be it ordained,* That the governor for the time being, the chancellor, and the judges of the supreme court, &c." Does not this language extend the objecting power of the council to bills which may be deemed inconsistent with the public good, as well as to bills inconsistent with the spirit of the constitution?

Again. What has been the practical construction of the constitution from the time it went into operation down to the present day? The gentleman from Oneida, (Mr. Platt,) has shewn, that the council has uniformly applied its objecting powers to both description of bills. Was this an usurpation? Is not usurpation, by any of our public functionaries, an offence of a high and alarming nature? Where were our patriots and sages of the revolution, when this daring usurpation commenced? Were they absent, or asleep at their posts? Nay, where have the champions of the constitution, the faithful watchmen of the majesty of the people, been, during its continuance ever since? Were they, too, absent, or asleep at their posts, that the flagitious usurpers have not been brought to condign punishment? The simple truth is, that this complaint of usurpation, if well founded, would cast an indelible reproach upon our wisest and best men, as well as on our most clamourous patriots, for remissness—for tame and servile acquiescence in a system of profligate usurpation. Is any gentleman, who hears me, willing to take such a reproach upon himself?

I will now pass on, to offer a few remarks upon the proposition reported by the select committee, and the amendment of the gentleman from Dutchess, which are the proper subjects of discussion. The merits, of both the proposition and amendment, have been so fully developed, that I shall content myself with stating concisely, my reasons for preferring the former.

It seems to be agreed, on all sides, that it is wise to place a qualified negative on the legislative power, somewhere.—The select committee propose to give it to the executive solely, in the same manner that it now resides in the council of revision. The amendment offered, proposes to give a majority of the members, elected to each branch of the legislature, the power of passing a bill, any objections made thereto notwithstanding.

I do not agree to the amendment; because, 1st. The objecting power will be materially weakened by vesting it in the executive alone, and the amendment will enfeeble it still more. For it is not probable, that when a majority of both legislative branches have passed a favourite bill, they will permit it to be defeated by the single negative of the executive. 2d. In case any considerable number of members should be absent when a bill is returned with objections, it may not be practicable, at all times, to obtain a constitutional decision upon the objections, without some delay and inconvenience.

Having declared myself in favour of the proposition reported by the select committee, it behoves me to reply to some of the objections which have been urged against it.

The gentleman from Richmond says, that the judiciary possess competent power to set aside unconstitutional laws, and that he is willing to repose himself on that power for safety. But he seems to have forgotten that the judicial power operates correctively, and cannot be called into exercise until a law is in operation—until wrongs have been committed under it, and the sufferer presents his case in due form to a judicial tribunal for decision, and that in the mean time, great mischiefs may result from the operation of unconstitutional laws.

Again. The judicial power cannot reach the evils of hasty, unadvised, and pernicious laws, which do not conflict with the letter or obvious spirit of the constitution. The proposition of the select committee creates a preventive power against the passage of such laws, which includes unconstitutional laws also. Is this not desirable? Is it not wise to provide a reasonable guard

against the passage of unwholesome laws of every description? Is it a sound objection to such a guard, that the judiciary has competent power to arrest eventually the operation of an unconstitutional law? I apprehend not.

The gentleman from Richmond supposes that the wisdom and virtue of the two houses of the legislature, elected as the members are, by different classes of electors, affords adequate security for deliberate, and wholesome, and wise legislation. If his supposition be correct, the additional security of a qualified negative, vested in the executive, cannot operate injuriously—For the wisdom and virtue of the legislature will not be impaired by requiring it to re-examine any bills which it has passed, with the aid of the additional lights which the objections of the executive may furnish.

Again. Can any gentleman determine how long the present distinction, as to the qualifications of electors, will be preserved? Should that distinction be done away, the argument derived from it will fall to the ground.

It is further objected, that the qualified negative of the executive may defeat the passage of salutary laws. I conceive, sir, that the power of doing good includes the power to do evil. The validity of the objection depends therefore on the probability of danger that the power will be abused—Is there good ground to apprehend that the executive will abuse the objecting power? The opposers of this proposition tell us, that full confidence may be reposed in the wisdom and virtue of the legislature, because the members depend on the will of the people for their seats. And is not the executive chosen by, and therefore equally responsible to, the people? Does the theory, or practical operation of our government, justify a belief, that the people have less regard to wisdom and virtue in the choice of their chief magistrate, than in the selection of their senators and members of assembly? Surely not. Then let me ask whether it is a reasonable presumption, that the collective wisdom and virtue of the legislature will be diminished, by adding to it the wisdom and virtue of the executive in the mode proposed, and for the purpose contemplated by the select committee? It seems to me that the reasoning of gentlemen against the proposition, is palpably fallacious and incongruous. The only solid objection, in my opinion, to placing the objecting power in the executive, is, that it will not be exercised so often, nor with so much firmness and effect, as the public good may require.

Again. If the sense of the people on this subject is to be regarded, we have their sense in favour of a qualified negative explicitly declared in the Convention of 1777, and virtually reiterated in the Convention of 1801, by adhering to the third article of the constitution, by which the council of revision was instituted. Nay, we have the testimony of the United States, in favour of the proposition of the select committee, corroborated by the separate and concurring testimony of many individual states, and by the approbation of the most enlightened and distinguished statesmen throughout the union.

But I will not trespass longer upon the indulgence of the committee. I give a decided preference to the proposition of the select committee, and therefore shall vote against the amendment offered by the gentleman from Dutchess.

Gen. Tallmadge rose to explain. He said, when the gentleman from Otsego (Mr. Van Buren) had the floor, he did not correct an error into which he had fallen, because he expected to reply. The gentleman from Richmond (Mr. Tompkins) having fallen into the same error, it became his duty now to explain.

Mr. T. said it was imputed to him, that he had declared that the select committee had made their report to separate the judiciary from the council of revision, upon grounds of kindness to the judges, and a belief of the uniform correctness of the conduct of those men. He said he had made no such declaration. It would be remembered, that the gentleman from Delaware (Mr. Root) had declared on the floor, that the report to separate the judges had been made by the committee, upon the ground of the malconduct of the judges, and the just odium which had attached to their characters. He could not, as chairman, admit, by his silence, such motives to be attributed to the committee, or to himself. In reply to the charge of corruption in the judges, he did declare, that no such consideration influenced the committee—that they had been influenced by the great and known principles of government, to provide a separation of

the judiciary and legislative powers. He had expressly disclaimed any expression in regard to the individuals. He had declared that it was intended to write no "inscription" either upon the living or the dead—and then, and as pointing out the benefits resulting from the separation, he had said it would serve to disconnect the judges from politics—shelter them from imputations, and be a kindness to them. In the performance of his duties in this Convention, he should not allow his opinions of men, or the virtues or vices of any incumbent of office, to influence his course. He felt that he was called to legislate on great principles, for the good of ourselves and for posterity, and not with regard to individual cases. He thought he had before been sufficiently explicit.

Mr. Radcliff had hoped that the report of the committee would have been adopted with the same unanimity with which the resolution for abolishing the third article of the constitution bad been passed on Tuesday. But there was now, he perceived, little hope of it. From the turn the discussion had taken, he thought further examination necessary—particularly with regard to the precedents which had been cited from other states. He moved, therefore, that the committee rise and report.

The motion prevailed, and the Convention adjourned.

FRIDAY, SEPTEMBER 7, 1821.

The session was opened by prayer by the Rev. Mr. Mayer. The President took the chair at 11 o'clock, when the minutes of yesterday were read and approved.

Mr. Sheldon, from the Committee who were directed to enquire whether any, and if any, what alterations are necessary to be made in that part of the constitution of this state which relates to the executive department, reported:

That the following amendments ought to be made and substituted, instead of the 17th, 18th, and 19th articles of said constitution.

And this Convention doth further, in the name and by the authority of the people of this state, ordain, determine, and declare, that the supreme executive power and authority of this state, shall be vested in a governor, and that statedly once in every two years, and as often as the seat of government shall become vacant, a freeholder, who shall have been fourteen years previous to his election, a citizen of the United States, and who shall have resided in this state five years next and immediately preceding his election, unless he shall have been absent on public business of the United States, or of this state, and who shall have attained the age of thirty-five years, shall be by ballot elected governor by the electors qualified to vote for the most numerous branch of the legislature; which election shall always be held at the times and places of choosing representatives in assembly for each respective county; and the person having the greatest number of votes within the state, shall be governor thereof, who shall be eligible to said office not exceeding eight years out of ten.

That the governor shall continue in office two years; and shall by virtue of his office be general and commander in chief of all the militia, and admiral of the navy of this state; that he shall have power to convene the senate and assembly, on extraordinary occasions; to prorogue them from time to time, provided such prorogation shall not exceed sixty days in the space of any one year; and at his discretion to grant reprieves and pardons to persons convicted of crimes, other than treason or murder, or crimes punishable with death; in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting; and they shall either pardon or direct the execution of the criminal, or grant a further reprieve. And it shall be the duty of the governor to report annually to the legislature the names of the persons pardoned; the crimes, the time when convicted, before what court, and the reasons for granting such pardon.

That it shall be the duty of the governor to inform the legislature at every session, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good

government, welfare, and prosperity; to correspond with the government of other states, and of the United States; to transact all necessary business with the officers of government, civil and military; to take care that the laws are faithfully executed to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature.

That the governor shall at stated periods, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

The report having been read,

On motion of Mr. Sheldon, it was committed to a committee of the whole, and ordered to be printed.

Mr. Fairlie, from the committee on the rules and orders of the Convention, reported one or two amendments; which having been explained by Mr. Spencer, were, on motion of Gen. Root, ordered to lie on the table.

THE COUNCIL OF REVISION.

On motion of Mr. Tallmadge, the Convention again resolved itself into a committee of the whole, on the unfinished business of yesterday—Mr. Sheldon in the chair.

Chancellor Kent. I do not rise to take any further part in the debate on the question now before the committee. I have already expressed my opinion in favour of the amendment as originally reported, and I do not apprehend it to be requisite, in the due discharge of my trust as a member of this Convention, that I should enter into altercation with members whose views on the great points in discussion should not coincide with my own. I shall endeavour on every question of moment that may be agitated in this house, to deliver my sentiments with brevity, and deference to the judgment of others, but at the same time with frankness and freedom.

My object at present, is, to correct some mistakes into which I apprehend the honourable *the President* inadvertently fell yesterday, in his observations upon the proceedings of the council of revision, during the period that he presided in the administration of the government. He was pleased to indulge in some observations upon the council in which the official character and conduct of the members of it were implicated. He observed that the council in their votes upon bills that were submitted for their revisal, partook of the political feelings and character of the political parties that at the time divided the two houses of the legislature, and that the same line of distinction that had marked the parties in the legislature in the passage of bills, uniformly marked the decisions of the council. He was pleased to say that he himself had equally felt, and acted, and voted, in the council, under the same political impulse, and had partaken of the same infirmity. To justify his remarks, the President referred to the case of the bill of the 14th of March, 1809, for apportioning the representation in the legislature among the four great districts, which the council returned with objections; and to the bill of the 3d of November, 1812, providing for the appointment of additional judges of the supreme court, and which the council also returned with objections. Those two bills, I understood him to say, had passed the legislature upon party grounds, and had been objected to in the council upon the same ground; and the line of party distinction in the two houses upon these bills had been as distinctly marked by the votes of the council.

I was very well pursuaded at the time, that the honourable the President was in an error, and that the charge was entirely without foundation, but that the truth in respect to those cases might be perfectly ascertained, I have had recourse to the records of the council of revision; and I find that to the first bill I had the honour to submit to the council some objections, and that after a full discussion, the objections prevailed by the following division in the council:

For the objections—Chancellor Lansing, Chief Justice Kent, Mr. Justice Thompson, Mr. Justice Van Ness.

For the bill, notwithstanding the objections—The Governor, Mr. Justice Spencer, Mr. Justice Yates.

It is sufficient merely to state this decision to show that the charge is incorrect. It is a fact of universal notoriety, that my venerable predecessor, the late chancellor, and the honourable Mr. Thompson, who now fills one of the executive departments of the government of the United States, with honour to himself and with utility to his country, belonged to a different political party, than that to which the other two members, who voted with them on that occasion, belonged.

In the case of the other bill, in 1812, five objections were reported to the council by the then chancellor Lansing, and were agreed to as follows:

For the objections—Chancellor Lansing, Chief Justice Kent, Mr. Justice Thompson, Mr. Justice Yates.

Against the first objection only, the Governor.

There were no other members of the council present.

Thus, sir, we perceive that in the cases selected to prove the predominating influence of party spirit in the council, the spirit of party was subdued by the firmness and independence of the council. I am not called here to vindicate my official conduct as a member of the council, nor am I responsible to this house for my acts in another place; but I must be permitted to say, after the charge that has been made, that for the twenty-three years in which I have had the honour to be a member of the council of revision, I have always endeavoured to discharge my trust without regard to party influence, and with a single reference to the intrinsic merits of the bills that have been submitted to the council. My judgment may have frequently misled me, but I have never considered myself, in my official character, as the representative of a party. My judicial appointments have been conferred upon me successively by different parties, and I have always considered myself, and have always endeavoured to discharge my duty in my public character, as the impartial trustee of the community at large. I therefore deny and disclaim, so far as it respects myself, the imputation which has been cast upon the council.

The President (Mr. Tompkins) rose to explain. In reply to the honourable gentleman from Albany, (Mr. Kent) he must express his surprise at his attempt to divest the first transaction in the council of revision, to which he had alluded, of a political or party character. That gentleman well knew that the state was at that time divided into *three* parties; and that the federalists and *quids*, as they were called, acted in concert, in opposition to the republican party; and the division in the council, on the bill alluded to, was decided according to the state of parties. The same thing continued until the late war, and precisely the same division occurred in the council of revision on the question relating to the Union Bank, the Bank of America, and on all other political questions.

Aware that the gentleman from Albany was a party in these transactions, and was well acquainted with the political divisions which distinguished the proceedings of the council on all party questions, he should forbear further comment on his attempt to mislead this Convention as to the political complexion of the council, at the time alluded to.

With respect to the other case to which the honourable gentleman had adverted, he has misunderstood me in point of fact. I did not assert that the division on the bill providing for the manner and time of paying two additional judges of the supreme court, was on political grounds. But I did say, that in my judgment, it was an indelicate and improper assumption of power on the part of the judicial branch (six sevenths) of the council, thus, by their own act, to take to themselves the limitation of their own number. And I did say, and I do now repeat, that there is not one of the judiciary who has the hardihood to defend the objection then made, or who does not blush at its palpable absurdity and inconsistency. Indeed, unless the judiciary can, by at least one reference, refute the allegation I made, that for thirty years political questions in the two houses have been equally and universally so in the council, and that every individual judge has for that time been reputed and notoriously an ardent parti-

zan in politics, they ought to submit to the truth of the allegation, of which they cannot but be conscious, with modesty and silence.

Chief Justice Spencer said he did not rise to enter into the debate, because the argument was exhausted. But he felt himself peculiarly called on to reply to the statement of the gentleman from Richmond (Mr. Tompkins) respecting the proceedings of the council of revision. That gentleman had said, in the debate of yesterday, that the council of revision, for the last thirty years, had decided according to the political parties to which the respective members belonged. His own (Mr. S's.) experience did not extend so far back as that period; and he was not therefore at liberty to speak of that body, before he became a member. He took his seat in 1804—a period previous to the time of the gentleman from Richmond taking his seat, who was his junior on the bench. He had no doubt that the honourable the President believed what he had stated, with regard to the acts of the council; but for himself, he must disavow concurring with him in opinion, and disclaim having been actuated by such motives. He had admitted, on a former occasion, that the members of the council being men, were subject to like frailties and passions as others, and might, in some cases, have been biassed by political feelings. Where was the man who, placed in a community agitated and torn as ours had been by political dissensions, would not be in some degree liable to such biasses? But whatever might have been the feelings and sentiments of other members of that body, for himself he must declare, that he had never given a vote, which he did not conscientiously believe to be conducive to the public good. The confessions, therefore, of that gentleman, he apprehended, must be confined to himself—He could not allow him to confess for him. The gentleman has made a very broad assertion —he has stated, that on all occasions, the council had been actuated by political motives, whereas there are but few cases in legislation, which would afford an opportunity for the operation of such feelings. He could not believe that in a great majority of cases, the decisions of the council had been in the least degree influenced by political considerations. [Here Mr. Tompkins rose to explain. He had been misapprehended by gentlemen. As a member of the council of revision, he had spoken of himself as well as others, and had admitted that he was as much to blame as they. He had made no allusion to the members of the council in their judicial capacity. For the judiciary of the state, he entertained the highest respect, as well for their integrity, as for their talents and learning. And he should feel perfectly safe, to commit his rights and property, and those of his children, to their keeping.]

Mr. S. remarked, that after such an explanation, he had nothing more to say. He had understood the gentleman to express very different sentiments in debate yesterday; and to say, that not only himself, but his associates in the council, were uniformly governed in their decisions by political motives. He would make one single remark on the motion before the committee. By the vote already taken, the only independent part of the revisory power had been taken away; and it was proposed still further to weaken and attenuate the power left to the governor alone, by authorising the enactment of laws, notwithstanding his objections, by a bare majority of both branches of the legislature: This was nullifying the power, and rendering it entirely useless and unavailing. Can this be wise or discreet? For his part, he thought not.

Mr. King said, he could not forbear from expressing his regret, that gentlemen continued to advert to topics, which, since the vote to abolish the actual council of revision, could not be applicable to the subject now before the committee. He not only thought it could have no beneficial tendency in the further discussion of the question, but that these deviations were calculated to embarrass, more than to elucidate, the same; and if so, would hinder, rather than aid, the accomplishment of the business of the Convention. He expressed these sentiments with great deference, and with the utmost respect for the gentlemen referred to.

Mr. King observed, that he would add a word respecting the amendment before the committee. The power of revision is, by the constitution, vested in the executive and judiciary. On their objecting to a bill, two-thirds of both houses are required afterwards to pass it. The report of the committee pro-

poses to vest this power in the governor, and to require, as formerly, that two-thirds of each house be requisite to pass a bill returned with objections.' It is proposed so to amend this report, that only a majority of all the members of each house shall be required to pass a bill to which the governor shall have objected.

The stronger the revisionary power, the weaker is the legislative; and the weaker the revisionary power, the stronger is the legislative. As the executive alone is weaker than the executive and judiciary together, it follows, that a *greater* majority, and not a *smaller* one, as is proposed, ought to be required to pass a bill to which the executive has objected.

Mr. P. R. Livingston said, he was aware that the subject before the committee, was very much exhausted; that the territory of debate had been extensively explored; and that imagination was so far spent, that in her garden, perhaps, there was not a flower to be plucked. But when this subject is brought to a point, it does not require a great deal of argument to illustrate those truths at which we have so long been striving to arrive. The great question is this: how extensive shall be the power of this qualified negative? No person pretends to dispute, that power of that kind ought to be vested somewhere; and I should presume the fact was well settled, that it should be reposed in the chief magistrate of the state. The only question is, whether it shall be on the conditions reported by the committee, or on the grounds of the proposed amendment, which says, a bill may pass by a majority of both houses of the legislature, instead of two-thirds. We all agree as to the resort, in bestowing this qualified negative, although it has not been admitted with that frankness and candour, which I hoped to have seen on this occasion. An allusion has been made to the states of Rhode-Island, New-Jersey, Delaware, Maryland, North-Carolina, South-Carolina, and Ohio; in which states they have no veto; and will the Convention for a moment, turn their attention to the population and respectability of those states in which they have no such negative power. Are we to believe, that in these states, possessing so much wealth, talent, and population, this subject has not been examined? Do the evils of democracy, which have been so strongly depicted by the gentleman who contends for two-thirds of both houses, exist in these states only? Are not our sister states, having their jurisprudence bottomed upon the constitution of the United States, in this respect as democratic as our own! In all these states they have no such qualified negative. But, says the gentleman, this would not do in the great, wealthy, and populous state of New-York. I call on that gentleman to point out the magnitude of evil resulting from trusting to the legislature, the power of making laws. Since our constitution went into effect, our legislature have passed six thousand five hundred and odd laws, and with all the wisdom of the executive and judiciary combined, they have not been able to put their hands on more than one hundred and twenty odd laws. It has been said that the representatives of the people, are not the people—I contend that they are the people. It is idle to suppose, that in the definition of democracy, there is any thing which forbids that term being applied to any government except where the people are all personally present. It is impossible that they should all assemble—their business must be conducted by representatives. What is our constitution—how was it made, and how organized? By the people in their delegated character: they determined we should have a house of representatives—that we should have a senate, an executive, and a judiciary. What more? They entered into a solemn compact, that there were certain rights which were sacred, and in which we could not be disturbed, unless by a violation of the first principles of our government. Thus the several branches being distinctly designated, the executive power is known, the judicial is known, and the legislative is known. It cannot pass a law in contravention of the constitution, because that is paramount to all law. The executive cannot go out of the limits of the power assigned to him, without the liability of impeachment; and the same of your judiciary. Thus when a law is passed in contravention to the constitution, a law which violates public or private rights, who is to protect us against the encroachment of such a law? Does it, when it gets a being, fix down upon my

estate? No, the judiciary and the sheriff must execute it; if not, who must execute it? The chief magistrate of the state is to interfere, and see that it is executed, by calling on the strong arm of the government, the people, organized under municipal regulations as respects the military strength. Then the judiciary are the barrier to protect my rights from legislative encroachment; and I say no citizen can be injured, as long as the law does its duty. This is the power, and the only power, which ought to pronounce on constitutional or unconstitutional acts. Let me ask the Convention, what the effects of this article would be, if adopted as proposed by the committee; that no act should become a law, without the votes of two-thirds of the legislature—It would be rejected by the person possessing this qualified negative, if in his judgment it was not salutary or expedient; although two-thirds of one house should say it ought to be a law, for the want of one vote in the other, it must be lost.

Can this be right? In my opinion it is subversive of the first principles of a republican government.

Let me call the attention of this committee to the Convention of 1801, which was the first, and the only time, except the present, that we have ever been called to examine our constitution. I ask, what was the object of calling that Convention? The construction of an article in the constitution was such, as to render its true intent doubtful, with respect to the right of nomination of candidates to office—the executive claimed and exercised the exclusive privilege; but public sentiment soon compelled a construction of that article conformable to republican principles; extending that privilege to all the members of the council, consisting of four senators from the four great districts of this state, in conjunction with the executive. Were not these four men as well qualified, with their united wisdom and experience, to determine the merits or demerits of a candidate to office, as this individual? In my judgment they were, and the Convention so determined. Why was this? Because these men were to return to the people, and there was no danger to be apprehended from the people themselves.

What are laws? Your legislation is either public or private. If a public law is passed, can it affect a part and not the whole? If a private act, who has a right to pronounce on it, if not a majority of both houses of your legislature? No individual could be as competent to judge of its propriety, consequently it is a right of which they should not be stripped.

It has been said, that vested rights may be unguardedly placed in the hands of individuals. What, vested rights in contravention to the constitution! It is idle—no man can have such a right while the constitution is paramount to law, and if so, who has a better right to determine it, than that power which daily passes on every species of right?

We have been frequently requested to turn our attention to the state of Massachusetts for experience, and with all deference to that great and respectable state, I must say, that she is perhaps the last state in the union to which we should resort. She has given evidence of downright rebellion. She has had a legislature consisting of nine hundred citizens, and what were her views in having so numerous an assembly? They were, that any measure might be carried, amidst the tumult and confusion, whether salutary or pernicious. Still this state is alluded to as an example, notwithstanding the extremities to which she has run. Her assembly now consists of two hundred and fifty members; our number is one hundred and twenty-six. Comparing the proceedings in that state with those of the government of the United States, would be like comparing the proceedings of a town meeting, to the government of the state of New-York. There is an honourable and venerable member of this body, who shared in the proceedings of that Convention which formed the constitution of the United States: I mean my honourable friend from Queens. Every gentleman who has turned his attention to the subject, well knows, that there were serious collisions upon the subject of adopting that constitution, by the state of Massachusetts. They were tenacious of their sovereignty; they were willing to give up certain rights; but to be independent of the general government. These are strong reasons why this qualified negative in the executive of the

United States, was given to so great an extent; the small states were afraid of being swallowed up by the larger; and it was policy, it was wisdom. When the state of Connecticut is referred to, if any thing can be found which is applicable to you, it is extremely wise; but when any thing is found to accord with my views, it won't do at all—they are a family who all came from the same parents; they are a singular kind of people, wise as it respects themselves, but have no wisdom as it respects others. Of whom are the people of this state composed? I can scarcely pass my eye in a line that it does not cover a great many eastern gentlemen. The western part of the state contains a very great proportion of inhabitants from Connecticut; and will these gentlemen come here and sanction a power which their ancestors and forefathers never gave? I trust in God they never will. We have been told of the great state of Virginia, which in point of talent is unrivalled by man; and there, I must inform my honourable friend from Otsego, (Mr. Van Buren) they have the same restrictive power that I recommend, and no other; and still he is willing to allow that they go on very well, and derive many advantages from their present constitution. All the experience and wisdom of Jefferson, cannot make an impression on their minds, sufficient to induce them to alter their constitution. Does Jefferson tell where this power should be lodged, or what extent of power should be exercised by that department of government? I would willingly risk this question, if that patriot were here himself—I know his views of democracy were for taking power from the people, when it can be safely lodged in other hands; but nothing can be gathered from him, which would sanction the measure here contended for. My honourable friend from Dutchess (Mr. Tallmadge) has said, that commentators have sanctioned the principle for which he contends. I have lived long enough to learn, that the best commentator is experience. Notwithstanding all that may be said in favour of the speculations of jurists, who are like medical men, wise in theory, but when they come to give medicine, two to one that they kill the patient for want of experience. I never believed in commentators as much as my honourable friend appears to, who refers us to ancient republics, which existed centuries before we were born. We are told that a Cæsar arose: to be sure he did. And a Brutus was there! When that state arrives here, there will be not only one Brutus, but many. He says such was the experience of democracy at that age; but will my honourable friend say that they had any notions of liberty according to the acceptation of the present age?

Had Rome any idea of the habeas corpus act? Was she acquainted with the nature of trial by jury, or had she any knowledge of the fundamental principles of government? You can get nothing from antiquity—the only free government, and melancholy to add, is the one which we now enjoy. May the result of our deliberations serve to unite its parts, and render it an imperishable charter, of the rights and liberties of generations to come.

If any thing can be gained by experience, or example, you have eight states equal in political knowledge, territory, population, and wealth, to any other states in the union, putting their veto where I do; and requiring a majority of the legislature only, to put that veto at rest. Now I ask the Convention whether the jurisprudence of New-York is more wisely managed for public and private rights, than that of other states. I ask whether there is any other in the union which is so interesting, or any which presents itself as so worthy of imitation? After all, I ask this Convention, What is republican government, and how is it to be sustained? If virtue be not the rock, on which you build the house; all your checks and balances will be unavailing. If the great community at large are profligate in manners, and destitute of religion—without a sense of public virtue—the body politic corrupt and rotten—it is immaterial about your checks and balances—all must go down together. Where would be your governor with his private secretary and door-keepers, the people being exasperated? A mere feather in a storm. The judiciary would not lift an arm. When the tyrant of democracy arrives, it will be when the body politic is corrupted. Sometimes with an hundred thousand foot, she will creep like an insect, and at other times, in opposition to a hundred thousand, she will overturn all before her. If the ship can be preserved, for she is al-

ways in a tempest, it must be by the two anchors of religion and morality. Without these anchors, she must soon be wrecked, and with them she is safe. Now let us go back and enquire, whether there is no danger to be apprehended from putting this qualified negative into the hands of an individual, to so great an extent as has been urged. During the recent war, you have seen striking examples of the evils which may be anticipated, to result from the measure proposed. What was the conduct of the governors in some of the eastern states? They refused to obey the mandate of that power, which they were bound in duty to obey, in executing the law of the United States—willing to defend their own fire-sides against the grasp of the robber, the plunderer, and the assassin; but not willing to go across into the enemy's territory for offensive war. They declared that the constitution of the United States contained no such power—that they had the power of defence, but not of conquest. Had the whole union at that time force or power enough to compel that governor to do his duty? Had he been under a monarch, his refusal would scarcely have been heard, till his head had answered for it. Nor has the government of New-York power to enforce her laws—we have had an example of that kind but yesterday. When your legislature had passed a law ordering your comptroller to settle with a public agent, he would not do it, pretending there was an ambiguity in its construction. Now what is the situation of your governor, and what is to be expected from him? He comes in by a party, that party passes laws, he will have no objection to them, because he is deep in the interests of that party which brought him into office, and without which he could not have been thus elevated. We have an example in our present chief magistrate, who has friends that will swim or sink with him.—A law cannot be passed because you cannot find two-thirds of your legislature in favour of it. What better can you expect, while you have a man possessing this negative power to so great an extent, as to arrest the passage of any law which does not exactly correspond with his views of the subject, by saying it is unconstitutional or inexpedient. This is an outrageous power of an individual which may be exercised to destroy our liberties and our privileges—Nay, every thing that is dear to posterity. I will not let you unlock your treasury—you shall not have the sinews of war to defend yourselves. Would you consider yourselves safe under such circumstances, to be thus controlled by a chief magistrate, liable to be misled by the frailties of human nature, or driven astray by the whirlwinds of passion?

If a law be passed, in violation of our constitution, it is but a law of an hour; it finds its grave the next hour. Are there no other evils to be apprehended from giving to your executive this unlimited control, in addition to his personal influence? Should it be determined to continue his tenure of office for three years, and in the appointing power, to give him the right of nominating to office, it will be clothing an individual with more power than I would trust in the hands of any man on the face of the earth. The subject, then, resolves itself into this absurdity; that the majority of the representatives of the people, in senate and assembly, are to do wrong—of course, you are to presume that the minority do right. Now, in truth, the argument is the other way, when the majority act, and prima facie it is so, we are to suppose that they act rightly, and the minority wrong. It has been said, and truly too, that when men have once recorded their votes on the journals of the legislature, they will not be likely to record them in a different way, because an individual differs in opinion from a majority of them.—He will always know whether the minority is sufficient to sustain him, if not, he will not act at all; because, should the law pass both houses, he would be placed in difficulty. He would do as the great father of the nation did, on an important question, I allude to the national bank. What did the great Washington do on that occasion? He was met by Mr. Jefferson, who persuaded him that the law ought not to pass: he was met by another influential friend, who convinced him that it ought to pass—he finally permitted it to sleep till it was too late to arrest it, and by that act he lost credit which I heartily wish he had retained.

Now you will have many questions coming up, and by the report of the chairman of the committee, if the governor does not within ten days return the

bill, it becomes a law; if near the close of the session you will never have it returned. I am anxious that he should be bound to determine *pro* or *con* without any latitude in the exercise of his power.

I feel very sensible that I have trespassed upon the patience of the Convention, and I now ask an apology. I have stated, and I repeat it again; that whatever may be the decision of the Convention on this question, I shall cheerfully acquiesce in it from that principle which has governed me through life, and which, I trust in God, will govern me, while I believe in this great truth and principle of republicanism; that the majority are to rule and govern the minority; and that it is the bounden duty of the minority to suppose the majority right. It will not wound my feelings for a moment, if, in taking this question, I should stand alone. I shall console myself with the reflection, of a conscientious discharge of my duty, according to my best judgment, in which, however, I may have been mistaken.

Mr. RADCLIFF said, that after the full discussion the subject had received, it had not been his intention to trouble the committee with any remarks respecting it; and he should not now trouble them, if some observations and statements had not been recently made, which appeared to him to be incorrect, or founded in mistake.

He regretted that gentlemen had seen fit, on this question, to travel back and assign reasons for the vote already taken. In strictness, it appeared to him improper and out of order, and it had led to many personal and unpleasant remarks. The Convention had agreed, without debate, and by an unanimous vote, to abolish the council of revision; and if thereby they had consigned it to the tomb, they had done it at least in respectful silence, and he wished its ashes had not so soon been disturbed. But since gentlemen had thought proper to assign their reasons for that vote, after it was taken, without intending to follow the example, he would take the liberty to say, in justice to himself, that the reasons assigned by the chairman of the committee who made the report, although entitled to some considerable weight, were by no means the principal reasons which governed his vote on that occasion. There were other and more important reasons, in his opinion, for abolishing that council, and some of them would apply to other subjects which would probably be discussed in the Convention, when it would be more in order to consider them.

He did not propose to trespass on the patience of the committee, by entering into the general merits of the question, and he had been anticipated in some of the remarks he had intended to make, by the honourable gentleman from Queens, who had preceded him. Both the substitute reported by the select committee, and the amendment offered by the gentleman from Dutchess, admitted the propriety of a check. It was no disparagement to the legislature, to say, that a proper check ought to exist; and there was abundant wisdom to shew the necessity and utility of it. To answer a valuable purpose, it ought to be *efficient;* but if the amendment of the gentleman from Dutchess prevailed, it would be rendered altogether nugatory; it amounted to nothing more than to ask the *opinion* or advice of the governor; for the legislature, by a bare majority, might still pass any bill to which he might object. It would therefore give to the governor no actual power, or control, over their proceedings; and if the object was simply to obtain his opinion or advice, that might as well be obtained in any other way, without a constitutional or formal provision for the purpose. What would be the plain language of such an appeal to the governor? Would it amount to more or less than to say, Sir, we have passed this bill, according to the forms of the constitution, we present it for your approbation, but remember, if you do not approve it, the same vote which has passed it already, can pass it again—A proceeding like this would be trifling with the executive and in its operation a nullity.

The honourable President of this Convention had referred to the opinions and views of the members of the Convention who framed our present constitution, and stated that they were unwilling to vest the power of a qualified negative, as now proposed, in the hands of the executive alone, because it might be abused, or arbitrarily exercised; and that, therefore, they had associated the chancellor and judges with him in the council of revision. Mr. R. entertained

the highest respect for the distinguished men who composed that Convention, and would consider their views on the subject of high authority; but he was persuaded the statement now made was founded in error, and that reasons of a very opposite nature induced that Convention to associate the chancellor and judges with the governor in the council of revision. By looking into the proceedings of that Convention, and from the best information he could obtain, it appeared that they considered the executive as a weaker department of the government—as too dependent in his office both on the legislature and the people for a firm exercise of this power, and therefore they sought for more independent men to exercise it, and made the chancellor and judges, holding their offices by a permanent tenure, members of the council. This he understood was the true reason of introducing the chancellor and judges into the council of revision. But whilst that Convention was anxious thus to strengthen and fortify this department, they seem not to have been aware that they committed a greater error in connecting the judiciary with the legislative and executive departments, than they would have done if they had confided this power to the executive alone. The policy of that Convention seems to have been to endeavour to strengthen the hands of the executive. They had various propositions as to the term of his office, and with the same view they finally adopted the longest term, that of three years.

He did not think there was any danger that this power of a qualified negative would be often abused in the hands of the executive, and he agreed in the opinion expressed by other gentlemen, that there was more reason to fear, that it would not be exerted as often, and energetically, as it ought.

How, enquired Mr. R. is this power to be exercised? Not in private, nor by any secret cabal; but openly and publicly, in the most responsible manner. The reasons of the governor for objecting to a bill must be in writing, and they are to be placed on the journals of the legislature, and published to the world. Even with bad men, this would be an effectual check against the abuse of such a power.

The honourable gentleman from Dutchess (Mr. Livingston,) had called the attention of the committee to the constitutions of several other states in the union, and seemed to suppose that their authority added great weight to the argument in favour of his amendment. The gentleman has placed too much stress on these examples. It will not be difficult to shew, that no inference favourable to his position can be drawn from them. The constitution of Virginia had been placed foremost in the list of those to which he directed the attention of the committee, and the gentleman took occasion to pronounce a handsome eulogium on the statesmen and civilians of that state, to which Mr. R. was ready to subscribe, but the gentleman would find little support to his argument from this example. The constitution of that state is so different from ours and from any that our people would submit to, that it can afford no reason by analogy in favour of his amendment—It is one of the most aristocratic or high toned governments in the union. The right of suffrage is there limited to the higher class of freeholders, and the governor is not elected by the people but appointed by the legislature, and that annually—He is, therefore, the immediate agent or representative of the legislature, and entirely dependent on them for his support and continuance in office. To give to a governor, thus appointed, a negative on the acts of the legislature, would be inconsistent and absurd—It would be to give to the agent, the creature of the legislature, a power to control his political creator. The same observations apply to the states of North-Carolina, South-Carolina, Maryland, and New-Jersey, in all of which the governors are appointed by the legislature, and yet the gentlemen seems to have relied on some or all of those states in support of his position.

In Delaware and Rhode-Island, it is true, the governor is chosen by the people, and he has no negative, but these states are so limited in their territory and population, that nothing on this subject contained in their constitutions, can well be considered applicable to the state of New-York. These considerations, and the observations already made in regard to small states, by gentlemen who preceded him, furnished a full and satisfactory answer to any inferences drawn from these examples. In Ohio the governor is also elected by the

people, and he has no negative ; but before we recognize her example as proper to be imitated by us, we should inquire into the *operation* of her government in this respect. It has been justly said that *experience* is the guide to wisdom. Can the gentleman inform us what has been the practice or experience under the constitution of the state of Ohio, so as to throw light on this subject ? He believed we could have little information as to the conduct of the government of that state in relation to the particular question now before us, but we knew enough of the proceedings of her legislature, on some subjects, to admonish us to be on our guard against imitating her example. Has she not passed laws impairing the obligation of private contracts, and in different forms invading the rights of property. Nay, has she not passed laws in direct hostility to laws of the United States, and is she not now engaged in a controversy with the government of the union on the subject of those laws ? Let us beware of such an example.

These are all the states in the union the constitutions of which have *no checks* on the legislature. Let us next recur to those which have checks similar to that proposed by the gentleman from Dutchess.

The first and oldest of that class is Tennessee, the next Kentucky. The first of these was set apart from North-Carolina, the latter from Virginia. The people of these states may well be supposed to have had a partiality for the institutions of the states to which they formerly belonged ; and yet, in the formation of their constitutions, they departed from them, and adopted the principle of a qualified check, as now proposed by this amendment. Thus far they furnish an argument in favour of the correctness of the principle. But has the experience of these states been shewn to be such as to recommend their governments as models proper for us to adopt ?—Have their laws in all respects been wise and salutary ? Some of them of a recent date, must be considered by all of us of a very different character, and the observations already made in regard to Ohio, in a great degree apply to them. But we have the states of Indiana, Illinois, Missouri, and Alabama, and what, inquired Mr. R., do we know of their laws, or the operation of the particular provision in question, in their constitutions ? They are all of recent origin, without experience, and some of them scarcely organized. The constitution of Connecticut is but of yesterday, and can furnish no guide.

Mr. R. next called the attention of the committee to the states which had adopted the check as recommended by the report of the committee. They were Massachusetts, New-Hampshire, Pennsylvania, Maine, Georgia, Louisiana, and Mississippi. The constitution of Massachusetts had long contained this provision, and lately, on a revision of her constitution, they had continued it. Maine, on separating from her, had also adopted it. Pennsylvania had at first been without it, but in forming her present constitution, she too had adopted it. These were principally old states, and if the authority of new states was better in the opinion of any gentlemen, three of them were among the number. From this review it appeared, that the argument drawn from the experience of our sister states, was manifestly in favour of the proposition recommended by the report of the committee.

He had hoped there would have been the same unanimity in adopting this report of the committee, that there had been in abolishing the council of revision. Such a result would have made the most favourable impression on the public mind. He thought it unwise to hazard important changes upon theory alone, and dangerous to refine too much on the established principles of government. This he apprehended was the error committed by the framers of our present constitution. A spirit of too great refinement, he believed, had been the cause of some of the provisions contained in that constitution, of which we principally complained. When the regular departments of government are once arranged and truly organized, we ought not to be apprehensive of trusting each with the powers properly belonging to it. We ought to avoid a spirit of innovation. The power now under consideration properly belonged to the executive department; and whilst he was in favour of making every proper amendment to the constitution, called for by the occasion, he was unwilling to remove ancient land-marks, and resort to new and untried expedients. He hoped the report of the committee would prevail.

Mr. Hogeboom, wished to assign his reasons for the vote he was about to give on the question before the committee. He was not in the habit of speaking in public assemblies, and would not therefore probably be able to communicate his sentiments with as much facility and clearness, as some other gentlemen on the floor. He had, he said, voted to abolish the council of revision, because he considered that an improper body to have a voice directly or indirectly in the enactment of laws. That a check on the proceedings of the legislature was necessary, he was fully persuaded, and one at least as efficient as that contemplated by the report of the select committee: What its operation would be could not be foreseen; he was, however, willing to make the trial of it, as at present he could think of no better, and he was sure it could not be worse than the old one, that had been weighed in the balance, and found wanting.

The state, said Mr. Hogeboom, once owned a vast and very valuable property in land; a property, which if it had been husbanded with ordinary care and prudence, would have produced an income adequate to meet all our public burthens; and also provide a fund for the support of schools, sufficient to educate all our children to the latest posterity, free of expense. A law had been passed authorising the sale of this land. This law the council had not objected to. The land had been sold for a mere trifle. This great property had been squandered and lost. He did not impute improper motives to the council for not objecting to the law—the legislature were more to be blamed than they. This among other reasons, convinced him that a check was necessary, and one different from what had hitherto existed.

Not many years ago, a law had passed the legislature, enabling all who were dishonestly inclined, to defraud their creditors of their honest dues. The council made no objection to this law; and the consequence was, very many honest men lost their property, and roguery and corruption were encouraged.

Banks had also been a fruitful subject of legislation: These were forced through the legislature in rapid succession, until the state was literally overrun with them. And these were all approved by the council of revision. At the onset, a few of these institutions were in the hands of one political party—the federalists. They were enabled to make liberal accommodations. The republicans got into power, and said we too must have banks; and unless we have, we shall be ruined—our opponents derive great influence and power from them—they will destroy us if we have not the means put in our hands to resist them. In this way, bank after bank was erected until the credit and currency of the state was ruined.

We boast of our state as large and powerful, we are wealthy, populous, and enterprising. But have we honesty? No, we have no honesty.

Some years ago he had the honour of a seat in the legislature; we then had some lands left, and he wished to have them set apart for the purpose of erecting a fund for the support of common schools—the measure was popular, and approved by many. But there was also a college to be endowed; and it was insisted that a provision should be made for this college at the same time. To the endowment of colleges he had no great objection, though he supposed they could be well enough supported without. However, to secure the great object of getting a permanent fund for common schools, he had consented, among others, to the endowment of the college.

Another evil existed in the state, created by the legislature, and approved by the council of revision—he meant lotteries. To be sure it has been attempted to sanctify the object by appropriating the avails to the advancement of literature. In every city and village you see public advertisements of the places where, and the persons by whom, this legalized gambling is conducted. This he considered disgraceful to the state, and destructive of the morals of the community. He did not mean to say that the council of revision were alone to blame for these improper acts of legislation—the legislature were undoubtedly most in fault; and it was therefore that he wished to have a check on their proceedings, and a different one from what we have heretofore had. He begged that he might not be misunderstood; he meant not to insinuate any thing against the integrity of the judicial members of the council of revision—they were highly to be commended for their faithful, intelligent, and upright discharge of

their official duties; all he intended to say, was, that they were not proper persons to exercise the power of a qualified negative on the passage of laws.

Mr. Hogeboom thought it safest and best to lodge this power in the hands of the executive singly. He was not disposed to withhold from the legislature a reasonable confidence. In the choice of the executive he had a voice; he had none in the election of members of assembly, other than those from his own county; it was therefore but reasonable that he should be willing to put greater confidence in an agent in whose selection he had a voice, than in those who were chosen without his concurrence. He should therefore vote against striking out.

Gen. Root had hoped, from the unanimous vote on this question a few days since, that the debate would have been confined to narrow limits. But notwithstanding the remark of the gentleman from Albany, (Mr. Spencer) that the subject was exhausted, and that of the gentleman from Dutchess, (Mr. Livingston) that there is not a flower left unculled in the garden of fancy; yet as the gentleman from Oneida (Mr. Platt) had thought proper to defend the council of revision—to give a history of its acts—and to chant a requiem over its tomb, the discussion had taken a wide range, and did not yet appear to be exhausted. The object now seemed to be, to discuss the merits and demerits of the council of revision. The question on striking out was indeed confined to one point; but different opinions were entertained with respect to filling the blank. The honourable mover wished it filled in one way, and the gentleman from Richmond (Mr. Tompkins) in another; and other gentlemen perhaps would be in favour of filling it with three-fifths. It is not known preciely what majority would be finally agreed on, whether two-thirds or three-fifths, or any other proportion.

His honourable and venerable friend from Rensselaer (Mr. Hogeboom) had had experience enough to induce him to try a new course. Sufficient information might be gathered from the legislative journals to justify such sentiments. He should not inquire whether party views had mingled in the proceedings of the council—it was enough that its acts afforded just grounds for the opinion expressed by the gentleman from Rensselaer. But he asked if the course now proposed would remedy these evils. Would the governor be more safe than the council of revision, in checking bills for the sale of state property, in passing insolvent laws, and the establishment of a multitude of banks? Would not these bills have passed if the veto had been deposited solely with the governor? When we apply a remedy to any defect in the constitution, he wished it might be effectual; and such he did not think the one proposed by the committee.

Having been on a short excursion out of town, he took his seat too late yesterday to hear the whole of the argument of the honourable gentleman from Otsego (Mr. Van Buren); but he was in season to hear some positions, which appeared to him untenable. Because, forsooth, certain concurrent resolutions, which were unconstitutional, had passed the legislature, it was therefore necessary that the veto should be taken from that body and given to the governor. This appeared to be a *non sequitur*. He denied that money had been drawn from the treasury by concurrent resolutions, and explained the case of $50,000, said to have been drawn on such authority in 1812. Neither the late nor the present comptroller would dare to draw a warrant on the treasurer under such circumstances. He believed the legislature had never gone farther in this respect, than to authorize the clerks of the two houses to make some slight expenditures of the public money in fitting up committee rooms. But what if such abuses had happened? Would it take two-thirds of both houses to correct them? By no means—a simple majority would be sufficient.

In 1814 a law passed the legislature to aid in apprehending deserters from the United States army and navy. It was objected to by the council of revision, upon the ground that it was an infraction of personal rights, which ought in all cases to be held sacred. Then it was, if ever, when the council should have bent from its strictness, in aid of the country involved in war, and in apprehending deserters, who were stalking through the state in their laced coats with impunity; and when apprehended, sheriffs and jailors refused to receive them. This was in September, 1814. In 1801 and in 1813, all the acts of the legislature were carefully revised; yet a law to prevent vice and immorality

was suffered to remain on our statute book, authorising the arrest of a person who was found travelling on the Sabbath, and that without warrant founded on oath or affirmation. The law entitling mortgagors and mortgagees on the same property to vote at elections; the law authorising trials for pettit offences without jury; and the law authorising sheriffs to hold their offices more than four years, had passed the council without objections. We had had a council that had been governed by circumstances, and we were about to place the veto in hands, where it will be administered in the same manner.

The honourable gentleman from Otsego was in favour of having the qualified negative placed with the governor, although he admitted it would rarely if ever be exercised. It was said the governor would not dare oppose the will of the legislature, on which he was dependent for support; and because he would not do it, he must therefore be invested with a portion of the prerogative of a sovereign. If this were the case, it was quite immaterial whether one half or two-thirds of the legislature were required for the passage of a law.

The gentleman from Oneida, in his history of the council of revision, had not informed us how many bills have been lost for the want of two-thirds. Two-thirds were not found to pass the Convention Bill last fall, although public sentiment called loudly for the measure; and in such cases, no power under heaven should be able to resist the will of the legislature.

He admired the facility with which the honourable gentleman from Otsego can lately resort to European governments for precedents. He had traversed the waves of the Atlantic for models to teach us how to frame and administer republican governments. That gentleman has informed us, that from a writer he has seen, it appears that the royal assent to a bill which had passed the two houses of parliament, had not been refused since about the year 1692. Hence he concludes that this qualified negative will be quite harmless here. Whether this fact in the parliamentary history of that country be correctly stated or not, he could not say; it had not come within his particular examination. But admitting it to be a fact, will the honourable gentleman pretend to deny, that the royal dissent was not very freely exercised in the latter part of the reigns of the Tudor family, and during the reign of the Stewarts. In those days, the commons of England were stoutly contending for the rights of the people, in opposition to the usurped prerogatives of the crown. Whigs could then raise their voices with effect. The same principles which brought the first Charles to the block, and compelled the last of the Stuarts to abdicate his throne, procured the passage of bills which met the royal dissent. But upon the revolution of 1688, when William of Orange was called to the throne, a whig ministry was formed. There being no political conflict between the parliament and ministry, of course there was no exercise of the royal dissent. A whig ministry was continued, with the exception of a few freaks of Queen Anne, till the Hanoverian branch of the house of Brunswick was called to the British throne. Soon after, a tory ministry was formed, with a tory parliament at its command, which has continued to the present day. When the greatest statesman that ever directed the British sceptre or guided the two houses of parliament, was at the head of the ministry, there was no occasion for the exercise of the royal dissent. Sir Robert Walpole could prevent the passage of any bill which would not meet the approbation of his sovereign. Since that time no bill of public importance has passed the two houses of parliament which was not in accordance with the views of the ministry.

Let us, said Mr. Root, apply this to our case. It has been correctly said, that the governor will always be a partisan, and will probably have the two houses with him. In that case, should an improper bill be originated, would he not advise some friend that it be withdrawn? if against his party, he would oppose it. Should only one house be with him, the other house would operate as a check, and there would be no need of the qualified negative. The governor would be more likely than the council of revision to be actuated by party views, and to resist the will of his political opponents. But we have been told, that some check upon the representatives of the people will be salutary, in order to preserve them from their own worst enemies—themselves. The honourable member from New-York, (Mr. Edwards,) while descanting on this

subject, had not thought proper to cite any instances in his place; but he had understood it had been whispered out of doors, that if the governor had possessed the veto, the six million bank would not have been established.

But let us, said Mr. Root, examine the case of 1812. Sir, that corruption will creep into the legislature, and into other departments of government, this and other instances have fully proved. But would the evil be corrected, if the veto were lodged with the governor alone? In the instance alluded to, the torrent of corruption might have been checked; but it should be remembered, that we shall not always be blest with such a chief magistrate as we had in 1812. Could not the governor be approached? and would it be more difficult to pollute one, than four or five? It was true, as had been urged, that the governor is amenable to the people, and might forfeit his office by his misconduct; but his corruption would fix a stain upon the character of the state, which would not easily be washed away. There was no safety in the governor.

He was opposed to the proposition requiring two-thirds, because it savoured of aristocracy. Whatever the gentleman from Queens (Mr. King) might say, the governments of this country were democracies. He was aware, that there were aristocratic features in our constitution, and he hoped this was the time for expunging them, and rendering our government democratic. It was feared by the gentleman from Dutchess, that our constitution would be made too weak, rather than too strong. He had heard the same sentiments expressed in 1797, '8 and 9; but such doctrines were then called federalism, and those who opposed them were branded with the appellation of democrats, jacobins, &c. In 1801, there was a political revolution, and the epithets which were before odious became honourable and fashionable.

Here Mr. Root went into a definition of the several kinds of government, and asked if ours did not answer to the description of a democracy. No, says the gentleman from Queens, the Grecian states were democracies, when the people assembled *en mass*, to transact their own affairs. Was there any difference he asked, whether the people assembled in a body, or by their representatives? It is a maxim, what one does by an agent, he does himself. The titles of our acts and official papers were in *the name of the people*, who are present by their delegates. If half a dozen merchants should send an agent to New-York, instead of going themselves, the transaction would in effect be theirs, though performed by another.

We have been referred for a precedent to the constitution of the United States, because that had been adopted by all the states. The gentleman from Richmond had yesterday pointed out the distinction between a state government, and that of the United States; and the gentleman from Dutchess has to-day done the same. The president of the United States had never abused his power. It was said he had never given the veto but to two bills; he did not recollect but one, and that was so strong an instance, that its unconstitutionality was almost unanimously acknowledged. The people will not complain till their rights are invaded; and then they will rise in their majesty.

He wished to express what he believed to be public sentiment, so far as he had been able to collect it. The objection was not that the chancellor and judges were united with the governor; but it was the casting vote of the governor against the Convention Bill, that had excited public indignation. The people ask bread, and you give them a stone; they ask a fish, and you give them a serpent.

Col. Young. I am not disposed at this late hour to enter at large upon the discussion of the subject before the committee; yet I cannot forbear suggesting a few remarks before the question is taken.

The conduct of the council of revision has been referred to in the course of this debate; and an honourable member of that body has requested posterity to write its epitaph. I am not disposed to allude to that subject further than to notice, that this appeal to posterity seems to betray a consciousness that the public sentiment of the present day is altogether against it.

But while on the one hand I cannot extend my courtesy so far as to express my approbation of the doings of that council, neither on the other hand can I yield to the very extraordinary positions, assumed by the honourable gentleman

from Dutchess, (Mr. Livingston) who has moved, and the honourable gentleman from Delaware, (Mr. Root) who has supported the amendment.

They have maintained not only that the people are pure, but by a sort of transmigration, make it out that the legislature are the people themselves.—Than this, nothing, in my view, is more fallacious. The people are not more represented in the legislative than in the other branches of the government. The mantle of the people rests as much on the judicial and executive, as on the legislative departments; and the idea that all the power, virtue, and intelligence of the people is concentered and embodied in the legislative branch, to the exclusion of the others, is as preposterous as it is erroneous.

This train of reasoning involves the argument of the honourable gentleman from Delaware, (Mr. Root) in a singular dilemma. He has admitted, and with emphasis, that a law constituting a certain bank passed both branches of the ligislature by bribery and corruption. What! were the people *bribed?* Will he impute to the constituents all the guilt and corruption of their agents? Sir, this preposterous identity is not only unfounded in fact, but it is dangerous in principle. It takes away responsibility from the agent, by confounding him with his constituents; and it transfers to the innocent the transgressions of the guilty.

But, sir, in the very case alluded to, what would have been the result, had the negating power been then vested in the governor alone? The law would have been defeated. Acting on his responsibility, he would have been enabled, without the expense of a prorogation, to have protected *the people* from that law, which, in the language of those gentlemen, *the people* had enacted.

And here, sir, permit me to advert to a very singular circumstance in respect to the power of prorogation. It is an unquestionable prerogative of the governor. It has continued so nearly forty-five years; ever since our constitution has been formed. And during all that time, who has thought it a dangerous weapon in the hands of the executive? Where has been the complaint of its exercise? Where the solicitation for its repeal? Have any propositions been made to this Convention to take it away? Has a lisp escaped from either of my honourable friends of the alarming extent of this power?—a power which closes the doors of legislation against the representatives of the people.

Sir, there is not so great, so unlimited, and unchecked a power any where confided by your constitution. And yet this power is acquiesced in without a murmur, when at the same time, the mere authority to arrest and suspend in its passage a pernicious law, has called forth all the anxious sensibility of those who claim to be the exclusive friends of the people. Indeed, sir, they strain at a gnat and swallow a camel. And where is the danger of reposing in the executive the qualified veto contemplated by the report of the select committee?

We have been informed by the honourable gentleman from Richmond (Mr. Tompkins,) that our ancestors would not so repose it when our present constitution was formed. Sir, with every respect for that honourable gentleman, I cannot refrain from expressing an opinion that other motives actuated that body. Instead of apprehending that they clothed the executive with too much power, it is my impression that they believed they had given him too little; and in order that he might be induced to exert what was considered a wholesome check, they nerved and fortified his arm with the support of the judiciary.

But, sir, admitting that the fact was otherwise, what follows? That they had before them the acts of colonial governors, who had usurped legislative powers, and without adverting to the variance of election and responsibility, their eyes were directed to the avoidance of an evil under which they suffered. But, sir, experience has proved to us, that as the cause of the evil was different its effect has not reached us. Those governors were elected by the king of Great Britain; they were responsible only to him. But our executive is elected by the people, and to the people alone he is responsible.

But what has been the result of experience on this subject? Not many years after our constitution was formed, a portion of the same men who assisted in framing it, assisted also in forming the constitution of the United States. And what did they do? That invaluable instrument gives the answer. The same provision, which, from the abuse of it by the colonial governors, they had been in-

duced to reject, they there admitted ; not as a dangerous prerogative, but as a wholesome and salutary check.

This system of checks and balances runs through all parts of our constitution and laws. A justice of the peace, in our courts, has not conclusive jurisdiction even to a small amount. His judgment is subject to appeal and revisal through a successive grade of superior jurisdictions. A military fine is not imposed without the intervention of similar checks ; nor even a highway laid out without being liable to the inspection and concurrence of a revisionary tribunal.

Such is the structure of our government, and such are the wise provisions of our system. Our institutions presume that man is frail, and fear that he may be corrupt ; they, therefore, provided these various checks and balances.

Make your system, then, consistent in all its parts. Give this power to the governor. He is amenable to the people, and acts on his responsibility. And who does not know how much greater and more efficient is responsibility, when concentrated in an individual, than when divided among many ? In the exercise of this power by the governor, the public eye is fastened upon him. He cannot retreat into the shade of his associates ; but if he violates his duty, must bear, singly, and alone, the rays of public indignation.

It has been said by the honourable gentleman from Richmond (Mr. Tompkins,) that a man has not more sagacity, more intelligence, nor more virtue for being a governor, than he has without the office. Granted. But, sir, he has more responsibility, and must call into exercise more vigilance in the performance of his official duties, It has been admitted by the honourable gentleman from Delaware, and he has made it the subject of argument, that a particular bill to which he specially alluded, passed both branches of the legislature without his knowledge. That honourable gentleman was then a member of the legislature ; and his attention to business, his vigilance and industry are well understood and appreciated. If, then, such a bill could pass through all the forms of legislation without his observation, it shows most conclusively the necessity of providing a power in the executive, and making it his special duty to guard against such inadvertence ; being always responsible to the people, and looking to them for support.

The usual hour of adjournment having arrived, Mr. Young offered to waive any further remarks, if the question should now be taken.

There were numerous calls for the question ; but Mr. Sharpe observing that he was not in the habit of voting on such important questions, without assigning his views,

The committee rose and reported progress, and had leave to sit again.

The Convention then adjourned.

SATURDAY, SEPTEMBER 8, 1821.

Prayer by the Rev. Mr. Davis. At eleven o'clock the President took the chair, and the minutes of yesterday were read and approved.

Mr. Sharpe, from the committee to whom was referred that part of the constitution which relates to the rights and privileges of the citizens and members of this state, together with the act entitled an act concerning the rights of the citizens of this state, made the following report :—

That they have had the same under consideration, and although the committee believe that the principles of civil liberty are well understood, and will be scrupulously regarded ; yet they are of opinion, that it would be an additional safeguard to the people to specify distinctly, and adopt some of the most important of those principles ; and they therefore recommend the adoption of the following, as amendments to the constitution.

First—That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

Second—No person shall be held to answer for a capital or otherwise infamous crime, except in cases of impeachment, and in cases of the militia when in actual

service, and in cases of petit larceny, assault and battery, and breaches of the peace, under the regulation of the legislature, unless on presentment or indictment of a grand jury; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private pr perty be taken for public use without just compensation.

Third—In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial by an impartial jury of the county wherein the crime shall have been committed, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favour. But in cases of crimes committed within any county in which a general insurrection may prevail, or a general insubordination to the laws exist, or which may be in possession of a fore gn enemy, the inquiry and trial may be in such county, as the legislature may by law direct.

Fourth—Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall ever be passed to curtail or restrain the liberty of speech or of the press; and in all prosecutions or indictments for libels, the truth may be given in evidence, if it be made to appear that the matter charged as libellous, was published with good motives, and for justifiable ends; and the jury shall have the right to determine the law and the fact.

Fifth—The people shall be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

Sixth—The trial by jury, as heretofore enjoyed, shall remain inviolate.

Seventh—Excessive bail shall not be required, nor excessive fines be imposed; and all prisoners shall, before trial or conviction, be bailable by sufficient sureties, except for crimes, the punishment of which may be death, or imprisonment for life, or for a term of years, where the proof is evident or the presumption great.

Eighth—The citizens shall have a right, in a public manner, to assemble for their common good, and to apply to those invested with the powers of government, for the redress of grievances, or other proper purposes, by petition, address, or remonstrance.

Ninth—The military shall on all occasions, and at all times, be in strict subordination to the civil power.

The report was read, and on motion of Mr. Sharpe, committed to a committee of the whole, and ordered to be printed.

THE COUNCIL OF REVISION.

On motion of Gen. Tallmadge, the Convention again resolved itself into a committee of the whole, on the unfinished business of yesterday (the report of the committee on abolishing the council of revision, and the amendment offered by Mr. Livingston)—Mr. Sheldon in the chair.

Col. Young resumed his remarks. I shall occupy, he said, but few moments in making the additional remarks which I intend to submit on the question before the committee.

It has been more than insinuated by the honourable gentlemen from Dutchess and Delaware (Messrs. Livingston and Root) that it would be aristocratic, to invest the governor with the power of suspending the operation of bills, even subject to the limitation proposed in the report.

I do not deem it necessary to say much to repel such an imputation. After the sanction which the constitution of the United States has received in every state, vesting similar powers in the executive, after the various amendments which have been made of that instrument, after the scrutiny it has undergone by the most strenuous advocates for the people; and after an experience of more than thirty years, in which not a single objection has been made to that part of it, from any quarter of the union, it does seem that such an imputation may be put at rest. But, sir, a proposition has been made by the honourable gentleman from Richmond (Mr. Tompkins) to associate other persons with the executive, and to create a new council of revision, composed of different persons.

The object of this association is stated to be, to bring into the exercise of that duty a greater quantity of talent, experience, and learning, than can be supposed to exist in a single individual. But, sir, the governor will at all times have it in his power to avail himself of all, and more than all, the talents and learning which that amendment contemplates associating with him. He has constant communication with the judges, the attorney general, and other eminent legal and political characters, in whom wisdom and virtue may be supposed to reside. It is the course of legislation to print such bills as are important, and these are carried to him every morning. Hence he is apprized, from day to day, of the business before the legislature; can see its bearing, and is prepared to act upon it. It is therefore not necessary to impair his responsibility by creating a new body, from which he can derive no greater benefit than he can obtain without it.

We return, then, to the question, is it safe to trust the legislature with an uncontrollable power to enact laws, without an efficient check on the part of the executive?

The members of the legislature are elected by counties, and feel themselves responsible peculiarly to the counties that elect them. The governor is elected by the people of the state, and to the state is he responsible. If, then, local combinations are formed by bringing together for improper purposes, a powerful force, it will be in his power to prevent its effect. He is responsible to the whole of the state, and if he abuses the trust, the whole power of the state can be brought to bear upon him. In cases of combination in the legislative branch, the responsibility is divided among one hundred and twenty-six, and the shelter is effectual. But with him it is undivided, and he cannot escape it. In the exercise of this power, he must stand or fall by the weight of public sentiment. It was that alone which sustained the executive in the strong measure of prorogation to which I have alluded.

Much stress is laid upon the idea, not only that the representatives are the people, but that a bare majority is the people. The latter idea is often as erroneous as the former. Without alluding to the unfair practices by which the people are often misled, let us examine for a moment what those majorities are, and in what manner they are frequently created. Has it not happened in political parties, that the majority in the legislature has depended upon the single city of New-York; and a bare majority of two or three hundred, and those perhaps the *venal votes of negroes*, has carried the election in that city, and thus given direction to the sovereignty of the whole state of New-York! And what may not such a majority do, when in the uncontrolled exercise of its power? How often have we seen states *gerrymandered* (to use an eastern phrase) to perpetuate the power of a party, and that, too, by a body that did not represent a majority of the people. And is such a majority the people?

But, sir, this is not all. Suppose that in one branch of the legislature one party has a majority of *one*, and in the other branch the other party has a majority of *fifty*. May not the majority of one thus control the greater majority of fifty? Sir, it is altogether preposterous to regard a fortuitous majority, as constituting, of course, the majority of the people.

But we are told that we should not mingle the different branches of the government together. I admit it. The argument is a good one—but it is misapplied. The qualified veto recommended in the report, only gives to the governor the power of stopping a bill in its progress, until two-thirds of the legislature should decide on its passage. Its progress, then, becomes peremptory; and it might as well be said that you mingle the judiciary with the legislature, because you authorize the former to decide on the constitutionality of the laws, which the latter have enacted.

Mr. Duer. This protracted debate, I am sensible, Mr. Chairman, has nearly exhausted the patience of the committee, and every topic of argument connected with the subject, I am free to admit, has been already enforced with a power of eloquence, and illustrated with an extent of research, that I can never hope to attain. It is not therefore with the expectation of shedding light or novelty on the discussion, or of fixing the mind of any member, who may yet be hesitating, that I ask the attention and indulgence of the committee.

But it has occurred to others as well as to myself, that a somewhat fuller explanation than has been yet given of the reasons which actuate us in consenting to the reported amendment to the constitution, has been rendered necessary by the course of the debate: Such an explanation, we conceive, is due to ourselves—due to our constituents, and due to the vast majority of the people of this state, whose peaceful triumph over their adversaries, over those who by an extraordinary stretch of power, (to give the act its mildest term) sought to defeat their wishes so frequently and fully expressed, we are in effect now celebrating, and by our acts are bound to consummate.

Notwithstanding all that has occurred—all that has been said in the progress of this debate, I yet entertain the hope that the amendment as reported by the select committee will survive, not merely the attacks of its adversaries, but the more dangerous support of some of its professed friends, and will finally receive the sanction of the Convention. I intend no disrespect to the gentlemen to whom I allude by these expressions, but I refer to that inconsistency which many have strongly felt between the arguments they have urged, the opinions which they have expressed, and the conclusions which they have adopted. Did I entertain the sentiments in relation to the council of revision, which some gentlemen have taken such pains to avow, I should feel myself constrained to exert my best abilities and all the influence I could command, to prevent the passage of the amendment; not indeed with the view of adopting the alteration proposed by the gentleman from Dutchess, (Mr. Livingston) but for the purpose of securing and re-establishing on its former foundations an institution, which, if all that has been said in its praise be true, we have rashly, if not wickedly, consented to destroy. It is with great surprize, I must own, sir, that I have listened to these praises, and I cannot help thinking, that at this time, and on this floor, they ought not to have been uttered. They were calculated to provoke a discussion that in common prudence ought to have been avoided. The causes that have led us to dissolve the council of revision, I had supposed, were understood and felt by all; and I had hoped that we should be permitted to exercise in silence, that sentence of condemnation which the voice of the people had so clearly pronounced. But a different course has been adopted. Those who, as it seems to me, were most interested to maintain this silence, have been the first to violate it, and have, in effect, challenged a discussion which a great majority of this committee would willingly have consented to waive. A formal elaborate elogium has been pronounced on the character and acts of the council of revision. Its salutary influence in restraining legislative usurpation, and the purity of the motives by which its members have been actuated, have been loudly asserted. The imputation that political feelings have been permitted to pollute the sanctuary of its deliberations, has been repelled in a tone of lofty indignation, and an appeal has been confidently made to the gratitude and veneration of posterity, from the ignorance, and prejudice, and passion, that now prevail. And yet, sir, this very council of revision, by an unanimous vote, we have consented to abolish! There is something in all this that I must confess I find it difficult to comprehend, and the reasons that have been assigned to reconcile the PRAISES *and* THE VOTE, have served only to increase my surprize. I am sure, sir, that the reasons to which I refer, are not those that have influenced the majority of this committee, and could we assent to the justice of the praises that we have heard, I trust that we should feel it our duty to rescind the resolution that we have passed, and reject the amendment proposed by the select committee, as not merely an useless, but a pernicious innovation. We could never consent, I imagine, to sacrifice a wise and beneficial institution to the authority of an abstract speculative maxim. Still less could we consent to abolish it to relieve its present members from the suspicion and calumny to which it is insinuated that the firm and independent discharge of their duties had exposed them. In this, and in all cases, the honour and the burthen must be taken together. A necessary office is not to be abolished because its temporary possessors shrink from the responsibility which it imposes. The authority of every political maxim must depend exclusively upon its truth, and if no public evils are found to flow from the

supposed union of the judicial and legislative powers in the council of revision, the maxim that prohibits such union must be false.

It is indeed true, sir, that in a well regulated government, the judicial executive, and legislative departments ought to be kept separate and distinct; but the meaning of the rule obviously is, that the *whole* powers of neither department ought to be vested in another; that those who make your laws should not be permitted to interpret or execute them. Not that these departments, though separate, should not be allowed to execute, to a certain extent, a control over the acts of each other. Experience has demonstrated that the exercise of such a control is, in fact, necessary to preserve that very independence which the maxim recommends and inculcates. We should, indeed, involve ourselves in a singular inconsistency, were we to abolish the council of revision on this ground, since the very substitute that we propose to adopt contemplates a similar union of the executive and legislative departments, which the maxim, as interpreted by the honourable chairman of the committee, (Mr. Tallmadge,) equally forbids. It seems manifest that other reasons than these must be found to justify us in demolishing the council of revision; and that, to shield ourselves, both from the reproaches of our own consciences, and the just resentment of our constituents, we are bound to show that it is a mischievous and dangerous institution, and that the objections to which it is liable, cannot be urged with truth against the substitute that is proposed. It is on these points, sir, that I propose to submit some few observations to the committee, and I shall endeavour to conduct the discussion with as little reference as its nature will permit, to the acts and conduct of the present members of the council.

It has been intimated, sir, in the course of the debate, that it is only within a few years that the defects of the council of revision, as a political institution, have been suspected or discovered. The observation, sir, is not correct. The authors of that immortal work which is the peculiar boast of our country, and which contains the most lucid investigation of the principles of representative government, that the world has yet seen, it is evident, were fully aware of the existence and nature of those defects. In a paper of "The Federalist," which is attributed to General Hamilton, two objections to the council of revision are distinctly and forcibly stated. The first, that its members, acting as judges in the interpretation of laws, are liable to be biassed by the opinions previously expressed in the exercise of their revisory power; and the second, "*that from their too frequent association with the executive, they may be led to embark too far in his political views, and that a dangerous combination may thus be cemented between the executive and judiciary departments.*"*

How far these anticipations of evil have been realised, I omit to inquire, though perhaps some may be disposed to cite them as proofs of that deep and almost prophetic wisdom, which distinguishes the writings of their illustrious author. Upon the validity of these objections we might safely rest our votes in favour of the resolution that we have passed, but the importance of the subject, if it do not require, will certainly excuse, a further examination.

What then is the council of revision? Let us break through the illusion which its name is well calculated to preserve, and we must see that it is in effect an executive council, of which the members hold their seats for life, and possess an efficient control over the acts and proceedings of your legislature. Such an institution in a republic is unexampled and anomalous, and exists in direct violation of the elementary principles of a republican government. A republican government is founded in a deep knowledge, and consequently a deep distrust of human nature. Hence its cardinal maxim is, that no power ought to be granted against the abuse of which some sufficient remedy is not provided. Yet by the constitution as it now stands, we have vested in a permanent and irresponsible body, a discretionary power of the most extensive nature. A power conferring an influence and authority vastly greater than cursory reflection would lead us to anticipate; and against the excess, the abuse of that power, no remedy, whatever, and no *adequate* check is provided. Under every form of government, discretionary powers must be entrusted, and as their exercise cannot be guarded by fixed and certain rules—as it is diffi-

* Vide "The Federalist." No. 73.

cult and almost impossible to discriminate between errors of intention and mistakes of judgment, experience has shown that there exists no remedy against their abuse, but to subject those in whom they are vested to the effectual control of public opinion, by making their continuance in power dependent on the public will. But the members of the council of revision, when once appointed, may be said to hold their offices in contempt of the public will, and by managing to secure a certain legislative and party support, may with safety set at defiance the wishes of a great majority of the people. That such a tribunal should ever have been created—that it should have existed in this state for so long a term of years, is indeed matter of great surprise. Yet I am inclined to think that the very circumstance that ought most to have excited our alarm, has tended most to blind us to its real nature and operation. I mean the union of its prerogatives (for such they may be termed) with the powers of your judiciary. Were a proposition now made to vest in a body of men chosen for life a negative on the acts of your legislature, it would be rejected at once with indignation and disdain. We should all be ready to exclaim, "this is monarchy, naked and undisguised;"—and yet this very power we have vested in a body of men holding by the same independent tenure other offices of the utmost weight and importance, and the whole authority and influence of which can easily be converted to strengthen and uphold them in the exercise of their legislative *veto*.

I know I shall be told, sir, that the constitution contains a sufficient check against the abuse of this power, in the provision that enables two-thirds of the legislature to pass laws notwithstanding the objections of the council. That this is a check, I do not deny, but its sufficiency, as such, I strongly doubt. I conceive, sir, that the sufficiency of every check depends exclusively upon the ability of those whom it seeks to restrain, to disregard or elude it. Without referring to the past conduct of the council of revision, we may assume it as a general truth, that those who are entrusted with a limited power, will get rid of the limitation if they can, and make that which is qualified in its terms, absolute in its operation. Applying this observation to the council of revision, we in effect only say, that its members will always be desirous that the interposition of their *veto* should be effectual in defeating the passage of the law to which it refers. I admit, sir, that they will not—they *cannot* openly disregard the check which the constitution imposes, by declaring the invalidity of laws that shall have received the sanction of the requisite majority. But what cannot be openly disregarded may be secretly eluded, and we must always recollect that it is by the operation of a secret influence, not by the open invasion of their rights, that the liberties of the people in a republican government are most liable to be endangered. This check, sir, will be eluded, and the constitutional barrier effectually undermined, if the members of the council of revision can manage to acquire such a share of political power, and to exert such an influence over the legislature, as will enable them in the exercise of the negative, to secure to themselves the support of the requisite minority. The attainment therefore of the power that shall thus free them from the shackles of the constitution, and give an unlimited control over the proceedings of the government, we may safely predict, will become the great pursuit of the members of your council of revision. The ambition of that power is a passion to which the temptation of their situation necessarily exposes them—which men of the most decided character and the most vigorous intellect, are the least likely to resist, and which the offices that they hold furnish the peculiar and almost certain means of gratifying.

It is commonly said by theoretical writers, that of all the departments of government the judiciary is the weakest; and if a comparison be made merely of the positive power that is delegated to each, the observation is certainly not unfounded. Yet, sir, it is equally certain, that there is no office that confers on the possessor such a sway and authority over the minds of the community as that of a judge of your superior tribunals; or of which the influence can be converted to the acquisition of political power with greater effect, and less hazard of detection. Judges who discharge their important functions with ability and apparent impartiality, naturally attract to their own persons and charac-

ters a portion of that respect and veneration with which the people of this country habitually regard the laws themselves. In this high and imposing character they usually exhibit themselves in all the counties of your state. They become personally known in each, to almost all the respectable men, and they exercise a control over the most numerous and intelligent profession that has always furnished and must continue to furnish your most active politicians—a control, the extent of which, it is not easy to define, and the influence of which over the minds of those subjected to it, it is still more difficult to calculate. If men, thus situated, and possessing, by virtue of their offices, a negative on the acts of your legislature, form a design of acquiring and cementing a political influence that shall extend over, and be felt in every department of your government, there is every probability that the design would succeed, not merely from the extent of the means that could be brought to bear on its execution, but from the difficulty with which the mass of the community will be induced to believe in its existence or its danger. The people will naturally think that those who administer the laws with ability, can best determine what new laws the various exigencies of the commonwealth require, and that their extensive knowledge of the state renders them the most capable of determining on the merits and qualification of rival candidates for office. Thus, for a long time the interference of your judges, both in the proceedings of your legislature, and your council of appointments, both in procuring the passage of laws and in the distribution of public patronage, will be viewed without jealousy or alarm, until at length, the barriers that separate the departments of your government will be swept away,—the whole authority, legislative, executive, and judicial, will come to be vested in a single body, and you will be cursed with a constitution, republican in its form, but aristocratic in its operations and effects.

Yet, sir, this is not all. It is upon the character and minds of the judges themselves, and the consequent administration of justice, that this pursuit of political power, this misdirected and unhallowed ambition, may be expected to produce their worst effects. The very attainment of their object must compel them to oppose the interests of one or the other of the parties into which your state may be divided; and it would be strange indeed, if their own breasts should escape the contagion of those passions and prejudices which it is their interest and their business to excite, to extend, and to perpetuate. What arts they may be led to practise, into what compliances they may be tempted, into what dangerous partialities they may be betrayed, I tremble to think. I feel a secret dread, when I reflect upon the mischiefs which an artful and plausible political judge may produce, and with what perfect security, with what little risk or dread of punishment he may proceed! As the most settled malice sometimes dresses its purposes in smiles, so the most determined partiality—that which moves to its object with the greatest skill and certainty, may assume the aspect and tone of unprejudiced and dispassionate candour; and even seem to compassionate the victim that writhes under its injustice. God forbid the time should ever arrive when suitors shall be anxious to inquire into the political sentiments of the judge by whom their causes are to be heard, and when upon the knowledge of those sentiments the event of a trial shall be constantly predicted! I am not called to speak of what has been, or of what is;—but continue your council of revision—let its members, or a portion of its members, be the active leaders of your political parties, and the time is not distant—the period will soon arrive—when this community will be afflicted with all the evils that can result from a fluctuating, and passionate, and partial administration of justice. Your laws, sir, will become uncertain as the gust that blows around us, shifting as the clouds that cast a transient shade over those windows as they pass. Their power may, indeed *will*, continue to be felt and dreaded, but dreaded alike by the good and the bad—but dreaded, as the sudden fury of the winds and the tempest; we know not from what quarter it will arise, nor upon whose head its terrors will descend.

I am not concerned to show, sir, the perfection of my argument does not require me to prove, that the evils, or any portion of the evils, that I have depicted, have yet displayed themselves. As a political institution merely, would I consider the merits of the council of revision. If its natural, its probable ten-

tency be such as I have described, we are clearly justified in abolishing it. It may be, sir, that the lessons of experience, to a certain extent, accord with, and confirm the results of speculation; but this is a question, not properly before us, and from the discussion of which there are numerous reasons that should lead us to abstain.

It is plain, Mr. Chairman, that the amendment which the committee have reported, is clearly free from the objections that I have endeavoured to urge against the council of revision. It is obvious that there is no comparison nor analogy whatever, between the qualified negative of an elective magistrate, resigning his power periodically into the hands of the people from whom it was derived, and the absolute or qualified *veto*, either of hereditary or elective monarchs. We may therefore with perfect consistency, abolish the council of revision, and adopt the substitute, which the committee have reported. The council may be a very unsafe depositary of the power of the negative, and yet it may be proper, and even necessary to retain the power itself. The propriety of establishing such a check upon the proceedings of your legislature, is distinctly admitted by the honourable gentleman from Dutchess. It is admitted in the very substitute that he has proposed. The question, therefore, properly before us, is not whether such a power ought to be intrusted, but to what extent it is to be confined, and in what manner it ought to be qualified. To this question, many of the precedents which the gentleman has cited, most of the arguments which he has urged, are quite inapplicable; since, if their authority or force are allowed, it would follow that a negative in any shape ought not to be retained; but as an odious relic of monarchy, should be struck out entirely from our plan of government. This opinion I cannot deem it necessary to combat. It has not been advanced in terms by the gentleman himself, nor can those who entertain it, consistently vote even for the substitute that he has offered. I shall take it for granted that we all agree in the opinion, that a revisory power, involving a negative on the acts of the legislature, ought to be vested in the executive, and that the sole object of our deliberations is to ascertain the extent and nature of the power thus to be created. Shall it be merely the naked right of returning bills to the legislature for reconsideration? or the power of defeating them, unless two-thirds of the legislature concur in passing them, notwithstanding the objections of the executive. To enable us to resolve these questions, it is necessary to advert to the objects, in contemplation of which, the negative is given. That the power ought to be effectual, that it ought to be so constituted as to secure the probable attainment of the ends proposed, will be admitted by all. It would be worse than mockery to vest a negative in the executive, the exercise of which, if exercised at all, would be fruitless and nugatory, and would tend to expose his character and office to public contempt, or public odium.

It is for these purposes principally that a negative ought to be vested in the executive. 1st. To prevent the passage of hasty and unadvised laws. 2d. To preserve the independence of the several departments of government, by protecting the executive and judiciary against legislative encroachment. And 3d. To protect the rights and interests of the majority of the people against the usurpation of a minority, by whom, as had been shewn at an early stage of the debate by an honourable gentleman from New-York (Mr. Edwards,) a majority in the legislature might frequently be elected.

Mr. D. then entered on a detailed argument to prove that in the two last cases, the interposition of such a negative as was proposed by the gentleman from Dutchess, would tend only to provoke ridicule, and ensure defeat, though even such a negative he admitted, might frequently have the effect of preventing the passage of hasty and unadvised laws. Where the defects of laws were accidental and unintentional, it might fairly be presumed that they would be corrected as soon as they were discovered and pointed out to the legislature; but that a legislative majority should abandon a formed plan, a preconcerted design of encroachment and usurpation, out of deference to the authority of an executive, in hostility to whom it had been probably conceived, it was absurd and irrational to expect.

That the danger of legislative usurpation was by no means imaginary, Mr. D. next proceeded to show.

Experience had proved that where legislative power was unchecked, either by the open or silent operation of a veto, it was certain to overleap all constitutional barriers,—to absorb in itself, and to claim and exercise the whole authority of government. The same feelings that had so strongly displayed themselves in the Convention, in the course of the debate, would frequently predominate in a legislature, and control its proceedings.

The belief that they only were the true representatives of the wishes—the proper guardians of the interests of the people; and that every accession of power to themselves was an increase of public liberty—an extreme jealousy and distrust of the executive and other departments of the government—and a constant desire to strip them of their privileges, narrow the exercise of their power, and reduce them to a state of feeble dependence.

The gentleman from Delaware (Mr. Root.) Mr. Duer proceeded to observe, has truly said that our government is a democracy. The will of the people is its origin, and to carry that will into effect, is the aim of all its institutions. But in all our speculations we were bound to recollect that it is not a pure, but a representative democracy—that the authority of government is not exercised collectively, but by various classes of delegated agents. The intent of the constitution that we are framing, and of every constitution, is to distribute to these agents the power thus derived from the people :—to mark the limits of their authority, and provide the means of restraining them in its exercise, within their appropriate sphere. The practical excellence of such a government consists in the fidelity of the representatives in their faithful execution of the trust that the people have confided, and the object of the checks and balances, of which the gentleman from Delaware has expressed such a singular dread, is to insure this fidelity in the agents of the people, by preventing them from exceeding their powers, and compelling them to act within those bounds and limits, which the will of the people, expressed in the constitution, prescribes and defines. They are necessary not to strengthen the public functionaries against the force or the change of public opinion, but to guard the people themselves against the misconduct of their agents, by effecting and maintaining that separation between the various departments, of government which is essential to its perfect administration.

But it is said, sir, that the power proposed to be vested in the executive may be abused; that it may be exerted to prevent the passage of salutary and even necessary laws. That it may be so abused I do not deny, nor is it difficult to imagine cases of possible abuse far stronger than any that have yet been stated. But when we are to determine on the expediency of making a grant of power, the question evidently is not whether it *may*, but whether in all probability it *will*, be abused, and whether the evils that may flow from its possible abuse, are not far more than counterbalanced by the benefits certain to result from its salutary exercise.

But what then, it may be asked, is our security against the abuse of this power by the executive? The same security, sir, that you have against the misconduct of all elective officers—his accountability to the people. The certainty that by abusing his trust, he will lose their confidence and favour. We may surely assume that he will act with common prudence—with ordinary discretion. He will not, therefore, enter into a contest with the legislature—a contest in which they would possess every advantage, except in those cases in which the strong conviction in the rectitude of his conduct will lead him to a confident reliance on the support of public opinion.

But, sir, an argument has been attempted to be drawn, by the honourable gentleman from Dutchess, from the conduct of some of the governors of the eastern states during the late war. But did those governors take the attitude they assumed unsupported by public sentiment? No, sir, they would not have *dared* to risk the responsibility of such a violation of duty, had they not been sustained by the immediate representatives of the people.

Much apprehension has been expressed in relation to the alarming power, which this transfer would enable the executive to assume. Really, sir, these fancied dangers are preposterous—they are inconsistent with each other. What are the powers already confided to your executive? Has he not the enormous

power of prorogation?—a power from the exercise of which he is subject to no legal responsibility, and which enables him by a single act to dissolve and overbear the collected energies of the people.

Has he not the control of all the physical strength of the state, as captain general and commander in chief of the militia?—a power, the abuse of which would enable him to withdraw from your frontiers, in time of war, the force that might be necessary for their protection.

Is it not strange, sir, that this power of the negative should be contested with so much vehemence, when other powers far more extensive, far more liable to abuse, are conferred upon the executive without difficulty? What power indeed can we grant that is not equally liable to abuse? If the argument be pursued to its legitimate consequences, it must end in stripping the executive of all the privileges and rights that have been hitherto annexed to his office. The substance of authority will be taken from him, and the name, the title, only, will remain. And indeed, sir, if this argument is to be admitted here, where shall we stop? If a remote, naked possibility of the abuse of power, is to be urged against its grant, to what extent shall the objection be carried? If allowed to prevail here, let us be consistent with ourselves, and let it prevail throughout. Let us then shorten our labours—demolish at one blow the constitution that we are called to amend—resolve society into its elements—throw off the restraints of order and civilization—rush again into the woods—become savages—trusting for our protection and security, not to laws that may be violated, and power that may be abused, but to the untamed cruelty of our hearts, and the native vigour of our arms.

Mr. Russell briefly assigned the reasons which would induce him to vote against the amendment offered by the gentleman from Dutchess (Mr. Livingston.)

Mr. Sharpe rose, not to enter into the debate, which had been so eloquently and ably conducted; but he would ask the indulgence of the Convention while he explained the reasons which would govern his vote on this question. He had a few days ago voted for abolishing the council of revision. For the last six years out of seven, he had had the honour of a seat in this legislative hall; and by you, sir, and other gentlemen who have been members of this house, and have seen the quantity of business before it, it would be acknowledged that he had had some experience in legislation.

He voted for the abolition of the council of revision, because he had long seen the evils of the judiciary being associated with that department of the government. He had long thought it ought to be an independent branch. But, sir, said Mr. Sharpe, during my short experience in legislation, I have seen much good done by the council of revision. I have seen bills hastily and unadvisedly passed—I have seen these bills objected to by this council of revision, and returned to this house, and when the objections were read, I have seen members stand astonished, that they had voted for a bill that was in the very face of that constitution which they had just sworn to support. I have seen that council object, and object again, to a bill, and after all, I have seen that bill pass by two-thirds of both houses; and it now remains a foul blot upon the journals of our legislature. I have seen that council of revision come down from their council chamber, and advise members to make alterations, rather than to send them back with those objections; and such alterations have been made. But, sir, I have seen the evils of that body too—I have been here in high party times—I have been here in peace and in war; and as the gentleman from Delaware remarked, it was in that dark day when the clouds of an awful war were lowering over our country; and at that period, when, if at any time, the constitution ought to have been made to bend, I have seen bills returned by that council of revision with frivolous objections. I have seen bills repeatedly returned to this house, which were by the council of revision considered inexpedient.

Sir, where is there an evil in the state that has worked more mischief than the multitude of *banks*. Have they objected to those bills? No, sir. Every gentleman within the sound of my voice will remember the speech of the governor, in which he shewed the impropriety of making more new *banks*—that they were great evils, and that they had done more injury to agriculture in this state than

any other cause; and in which he cautioned the legislature against passing any laws for increasing these institutions. What was the result that year? Two country banks, and one in the city of New-York were obtained. And how? The country banks were passed, and sent to the council of revision—The Franklin Bank bill was rejected by the house, and sent back to the senate—The legislature had passed a resolution to adjourn—The country bank bills were not returned from the council—A rumor was set afloat the night before the legislature was to adjourn, that if the Franklin Bank bill did not pass, no bank bills would pass during that session. What was the consequence? All the forces were then rallied, and the friends of the country banks found that they had but one alternative, and that was to pass the Franklin Bank. Next morning a motion was made for a reconsideration of the vote rejecting that bill; but as the bill had been sent back to the senate, this motion was not in order. A resolution, however, was passed, directing the clerk to request the senate to return it to this house—It was returned, reconsidered, and out of all rule and order, passed. The country bank bills were *then* returned from the council—and the Franklin Bank bill before midnight became a law of the state. But, sir, there is another objection. The council have a right to retain bills ten days; and every one knows, that as the session of the legislature progresses, so business increases. Petitions are received till the last day of the session. It is a right that every man has, to petition the legislature, and they are bound to hear him. Thus business passes at the close of the session; and I have seen laws not passed unadvisedly, hung up for a year, and the people of the state deprived of the benefit of that law for that period; yet the law was returned at the commencement of the next session, without objections. There is now hung up in that council, a bill affecting the rights and property of individuals; and I doubt not that after suffering it to remain there for a whole year, it will be returned to the next legislature without objections.

But, sir, I have still a stronger objection. I have seen the executive of this state recommend to the legislature a measure as being all important to the welfare of the state; and I have seen the legislature accordingly pass the bill with promptitude. Sir, I have seen that council of revision and the governor reject that bill, which had, as it were, been recommended but the day before. —That bill did not pass.

It was this that excited the indignation of the people of this state; and the voice of seventy thousand freemen has told me, that that feature in the constitution ought to be destroyed. I am aware, sir, that a veto ought to be placed somewhere. Legislative business at the commencement of a session is generally well done. I have rarely seen a bill rejected by the council of revision, that had been passed early in the session; but not so at the close. I could quote many instances. In 1820, the inhabitants of Canandaigua petitioned to have that village incorporated; the bill was presented to this house, and I think it cannot be said that it was unadvisedly passed, for one of its members presided over this house, a man distinguished for his talents and industry. Sir, that bill passed under the eye of the representative of that county. It went to the senate and passed there. It was sent to the council of revision, and thus became a law. One of the members took that bill home to his constituents. And, strange to tell, a clause in the bill provided that the trustees of the village should be impounded instead of their hogs!

But, sir, it is said, that to give this veto to the governor, is dangerous, unless a bare majority of the legislature may pass a bill which has been rejected. Sir, it is well known to every gentleman that this state has been in the habit of changing her representatives too frequently. Men come here with the best of feelings and motives; but ere they are here many days, they are not only assailed by older members of this house, but have a throng of members from the lobby harassing them, and they are many times committed upon a bill before they hear the arguments. When they have heard the arguments, they will say they have promised to vote so and so on that bill, and that one vote will not make much difference. Sir, if members will commit themselves before they have heard the arguments, it is not strange to suppose, that they will vote for any bill upon which they may have been thus committed, notwithstanding any

objections. We have been told that it will be difficult to obtain the passage of any bill that may not exactly suit the views of the governor; but my fears are, that he will not object to enough bills, because the more he objects to of this description, the better it will be for the interests of the state.

When seventy thousand people told us to break away this part of the constitution, they did not tell us to erect nothing in its stead. I am well satisfied with the vote I have given for separating the judiciary from this part of the government; but I am for substituting in its stead a controling power, with which the people will be satisfied, and which will be an efficient check upon imprudent legislation.

Chief Justice Spencer. I observed to the committee yesterday, Mr. Chairman, that the subjects of discussion on the proposed amendment, were exhausted; if the remark was then true, how much more so is it true now. I do not rise to discuss the question generally.

When, sir, I found myself elected a member of this Convention, I held a solemn communion with my own heart and understanding. I considered that a Convention of the sages of the state, the immediate representatives of the people, was soon to take place, to deliberate on and settle the fundamental principles of social order; to amend, to improve, and to ameliorate a constitution, which had been founded by a band of patriots—a constitution which had triumphantly carried us through a sanguinary revolution, and conducted us to liberty and independence—a constitution which had for nearly half a century, secured to us the blessings of good government, and wholesome and salutary laws. I determined in such a Convention, met to deliberate on principles of government which were to secure to the present age, and to future generations, to our children and our children's children, the inestimable rights of life, liberty, and property, to repress in myself every feeling calculated to disturb the grave and harmonious consideration of the subjects to come under discussion. I asked myself how I ought to act if any intemperate individuals, regardless of what was due to such an assembly, and to such an occasion, should endeavour to excite party feelings—to stir up prejudices, and for the purpose of carrying a favourite point, to produce excitements against individuals? My answer was, that it was my solemn duty to forbear recrimination; to confide in the good sense of this august body; to resist all attempts to induce a division from angry, revengeful, and party animosities. I believed that even those who, to gratify the feelings of the moment, should so far forget their duty, as to endeavour to excite prejudices here, would themselves eventually deplore the employment of such means; and that this Convention would rise superior to the passions and follies of the day, in contemplating the objects of the meeting, and the sacredness of the trust reposed in them. Our constitution has endured for forty-four years—how few are now living of those who gave us this noble monument of wisdom! Yes, sir, I unite with the honourable gentleman from Dutchess, (Mr. Livingston) in expressing my profound astonishment, that at so early a period the principles of civil liberty, and of republican governments, were so well understood. What a solemn consideration is it, that few, very few of us, can expect to survive for so long a period as has elapsed since the formation of the constitution we are now endeavouring to amend. This should be deeply impressed on our minds, and it will solemnize our feelings. On my part, I came here determined to forbear, resolved to suppress every motion unfriendly to cool, calm, and patient investigation. I have no prejudices to indulge. I feel myself the immediate representative of the people, called upon to maintain and establish their dearest rights.

This Convention have been told from one quarter, that the proceedings of the council of revision during the late war, laid the foundation of their own destruction; from another quarter, that their conduct in relation to certain bills at an anterior period, had sealed their ruin; and from another quarter, that on the rejection of the bill recommending a Convention, during the extra session in November last, the sentence of condemnation went forth against the council. I do not feel myself called upon to defend my conduct or opinions elsewhere before this Convention; but it is due to that body, it is due to myself, to explain the grounds why that bill was sent back with objections; and I think it will be

seen that the sentence was unjust, if indeed such a sentence has ever passed. It has been said that this bill did not pass hastily or unadvisedly. How is the fact? The legislature were convened on an extraordinary occasion, to appoint electors of president and vice-president; and it has been unusual to take up at that session, any bills but those of pressing necessity. Contrary as I believe to all expectation, the bill in question was passed through both houses; and in the senate, as I understand, it was received on one day, and passed the next. This bill recommended an election of delegates to be holden in the midst of winter, at a time unusual and inconvenient; but above all, it contained no provision for submitting the question to the people, whether they willed a Convention or not. The council believed that the legislature, acting under the constitution, chosen to legislate in pursuance of the constitution, had no authority to direct a Convention for the general purposes of amending and probing that sacred charter of our rights, materially and fundamentally, without a previous reference to the people, of the question whether it was their wish that it should be thus amended and probed. I deny the right of the legislature to direct a Convention. In doing so, they had no higher authority than any other respectable body of men, self-moved, and acting without any delegation of power whatever. Was the rejection of the bill, on these grounds, a high-handed and tyrannical act on the part of the council? Or was it a plain, fundamental, and republican principle, in maintenance of the rights of the people? We all acknowledge, that all power and all government of right belongs to, and emanates from, the people. How, then, was it consistent with that acknowledgment for the legislature to coerce a Convention, without first knowing whether the people willed it? We have been told that there was no doubt on that subject; the public will had been expressed through their representatives, and in town and county meetings. But is this so? Can there be any sure expression of the public mind, in a community so extensive as ours, but through the medium of the ballot boxes? Look at the danger of the precedent—a party gets into power; they find a constitutional provision in their way, an impediment to the exercise of their power; they resort to a Convention to amend the constitution, without a previous and legitimate expression of the public sense; the community is agitated; it is split into factions, and your government is shaken and impaired.

It has been said that the act was recommendatory, and not compulsory on the people. This will appear, on the slightest reflection, to be a mistake. If ninety-nine out of a hundred of the people were opposed to the measure, the ninety-nine had no means of expressing their dissent. The votes of ten electors in a county in favour of any candidates, would have constituted a valid election. The council insisted that, as a preliminary to holding a Convention, the sense of the electors should be taken, and an act was passed in accordance with these principles. And here let me ask, what evils have resulted from the delay which has taken place? The Convention, instead of meeting in June, met in August; but it now meets upon an undisputed right; the people have legitimately expressed their opinion in favour of a Convention. This delay of two months in the meeting of the Convention, is the only grievance to be complained of; but in my opinion, a great and salutary principle has been preserved.

It is true that a Convention was held in 1801, without a previous appeal to the people. That Convention was expressly limited to two subjects, and they were such as admitted of no delay. Conflicting opinions existed as to the construction of an article in the constitution; to settle that, and to reduce the representation, which was encreasing in a rapid and enormous ratio, were the only objects of consideration.—Under the rejected bill, the whole constitution was liable to be re-moddled; that precedent, therefore, was not one which could control, or which ought to have been followed.

If the sentence of condemnation has gone forth against the council, because they objected to the bill for the reasons I have thus briefly stated, all I can say is, that the condemnation has been undeserved; and since it was thought proper to correct a very gross mistake, the council have been represented as opposed to a Convention called in any way, and at any time. This was a gratuitous declaration, unwarranted in point of fact; the great objection was as to the manner of calling it.

Mr. S. said he had the honour to state to the committee, on a former occasion, that he considered the exercise of the revisory power by the judiciary, as liable to objection on theoretical grounds. It was in a degree a commitment of the judges on constitutional questions by a premature opinion, formed without hearing the arguments of counsel, and this, he thought, a serious objection; and it was not to be disguised, that it exposed the judiciary to catch the contagion of party feeling and conflict. It had always been a painful and irksome duty to him, and he wished to be disencumbered of it. He had no right, however, to yield it up from personal considerations; nor did he act on that ground, but under the conviction that the judiciary should have no concern directly or indirectly, in the passing of laws. He had long felt, and believed this to be incorrect in principle. One gentleman had insinuated that he wanted not the support of those to disjoin the judges from the council, on the grounds which had been assumed; but their votes would stand as fair, and tell as well, as those of others who voted on different grounds.

It had been said that it was not necessary to give to the revisory power, the right of objecting to bills on the ground of unconstitutionality, because the judges had the power to declare such laws of no effect. It is true they have such power; but the constitution, as it now stands, confers in express terms, the power of objecting to unconstitutional bills; and can it be believed that three learned men and zealous patriots, who assisted in framing that instrument, did not know that judges had the right to set aside a law in contravention of the constitution? Surely not. But they knew, also, that there must be an interval between the law, and its annulment by the judiciary—that mischief might in the mean time arise, and that possibly an unconstitutional law might be acquiesced in, rather than incur the expense of procuring its cancelment.

And here Mr. S. said, arises the distinction between governments having constitutions in the American sense of the term, and those which have none; which an act of the legislature cannot transcend.

Great Britain has no constitution, in our sense of the word. The power of parliament is omnipotent; it can do every thing, according to the ideas of a learned writer, but make a man of a woman. They had repealed fundamental institutions by mere act of parliament; they had converted a triennial into a septennial parliament, and they have passed various acts which were considered as forming a part of their constitution. It is our happiness, and the security of our rights, that we have written constitutions, which the legislative power cannot invade or transcend; and if they attempt it, the judiciary interposes to protect the citizen.

Mr. Spencer said, that it ought not to be lost sight of, that we are assembled to amend the constitution, not to make a new one; that it would be our duty to reform it only where inconveniences and evils had been practically felt and justly complained of; or in those cases, where the light of experience and the march of improvement and knowledge, clearly shew, that changes ought to be made, we could not act too cautiously; and we should above all remember, that innovation is not always improvement.

The question was taken on the amendment proposed by Mr. Livingston, and the same was negatived, 95 to 26, as follows:

NOES—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Breese, Briggs, Brinkerhoff, Buel, Carpenter, Child, D. Clark, Clyde, Cramer, Day, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Ferris, Fish, Frost, Hees, Hogeboom, Hunt, Hunter, Huntington, Hurd, Jansen, Jay, Jones, Kent, King, Knowles, Lansing, Lawrence, Lefferts, M'Call, Moore, Munro, Nelson, Paulding, Pitcher, Platt, Porter, President, Pumpelly, Radcliff, Reeve, Rhinelander, Rockwell, Rogers, Rose, Ross, Russell, Sage, Sanders, N. Sanford, Schenck, Seaman, Seeley, Sharpe, I. Smith, R. Smith, Spencer, Stagg, Starkweather, Steele, I. Southerland, Sylvester, Tallmadge, Ten Eyck, Townley, Tripp, Tuttle, Van Buren, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, E. Williams, N. Williams, Woods, Woodward, Yates, Young—95

AYES—Messrs. Brooks, Burroughs, Carver, Case, R. Clarke, Collins, Dodge, How, Humphrey, A. Livingston, P. R. Livingston, Millikin, Park,

Pike, Price, Richards, Root, Rosebrugh, R. Sanford, D. Sutherland, Swift, Taylor, Townsend, Van Fleet, Wheeler, Wooster—26.

Mr. Tompkins then called for the consideration of the amendment which he had yesterday submitted, but with an essential modification which he wished to make. He spoke some minutes against confiding the revisory power to the governor, and in favour of an efficient body of able counsellors to perform this duty. He was not for overthrowing institutions founded by the wisdom of our ancestors; he was opposed to the council as at present organized; but wished to preserve something like it; and would trust to the people to bear him out in it. He maintained that it was absurd to vest this power in the governor; and at the same time, by shortening his term of office, as it has been proposed, place him in a situation in which he will not venture to exercise it.—If they would extend his term of office for five years, and render him ineligible afterwards, he should not think it so objectionable. He wished a substitute for the present council of revision, to be composed of the governor, attorney-general, and——members, to be able counsellors, with the same term of office with the judges of the supreme court. He would have them permanent.—This project might not be popular; but he did not come here to legislate for a day—he was legislating for posterity. The Convention of 1801, was assembled to sanction a violent construction of the constitution. Then, the maxim was, to strip the governor of as much power as possible. Now, gentlemen are for giving him more power. In the Convention of 1801, he was opposed to retrenching the power of the executive. To him it was a proud triumph, that at the age of twenty-six, he stood alone against the then dominant party; and he believed that there were members who would now be proud if it could be said that they had taken the same ground.

Mr. Radcliff spoke in opposition to the proposition of Mr. Tompkins.—(Mr. T. said he would submit the amendment in blank. He wished merely to try the sense of the committee, whether they would have any such body for a revisory council.) Mr. R. continued for some time. It was erecting a new body, unknown to our present constitution. He considered the project inexpedient and impracticable.

Mr. Van Buren. As this proposition is now for the first time submitted, the committee had better rise and report; that is, if any gentleman wishes to speak. He did not, however, make a motion; and

The question was taken on the amendment offered by Mr. Tompkins, and it was negatived without a division.

Mr. Tompkins then proposed to amend the report of the committee, so as to confine the veto of the governor to constitutional objections.

Col. Young opposed. It is true that a great part of the public property has been disposed of; but we have yet some left; and it is highly proper that measures should be taken to keep what we have. Suppose a legislature should be found wicked enough, and corrupt enough, to sell the salt springs, to a company of speculators, or to lay their hands upon the school fund, ought not the governor to have power to arrest the progress of such a corrupt legislature?

Mr. Tompkins had hoped there would be no debate upon this amendment, but as it appeared to be leading to a discussion, he would withdraw it.

Mr. Tompkins then proposed a verbal amendment to the report of the committee to make it more explicit, in regard to *the person administering the government of this state*. In case of the death of the governor, the lieutenant-governor would administer the government; but he would not be the governor. Should the president die, the vice-president would administer the government; but he would not be styled the president.

Some little conversation took place upon this subject; and the motion was withdrawn by the mover.

Mr. Dodge then moved an amendment, the object of which was to require two-thirds of the members of both houses, to pass bills that may have been returned by the governor, only in cases when the objections were of a constitutional nature. In cases of bills being returned on grounds of inexpediency, or as being detrimental to the public good, the amendment would require only a bare majority to pass them, notwithstanding.

Mr. Wheeler. Mr. Chairman—With emotions of painful diffidence, proceeding from a profound veneration for the talents and patriotism with which I am surrounded; I rise to solicit from this honourable committee, permission, briefly to explain the reasons which will govern my vote on the question before you.

Sir, I have listened with attention, to the arguments of gentlemen who advocate the report of your select committee; and although, these arguments have been enforced by the fascinating powers of eloquence, yet, when disrobed of this magic dress, the subject presents itself to us, in the form of this simple proposition. Which will best protect the public interest, a negative power in the executive, over two-thirds of your legislature, or a control which shall not extend beyond the majority elect of both houses?

This government is founded upon the principles of a representative democracy—the sovereign power is solemnly recognized to be in the people, and to emanate from them: In delegating their trust, the people have disposed of this power to public agents, in such portions, and for such uses, as they, in their wisdom, have deemed best calculated to promote the public happiness.

The framers of the constitution of 1777, borrowed freely from that government, whose chains they had recently broken, and in organizing the legislature, they placed in the hands of the judiciary, a strong check upon the deliberations of that body. This check originated with the British policy of government, and was yielded to the throne for the purpose of defending the sceptre from what, in court phraseology, is termed an encroaching spirit in the people; or in other words, to shield the monarch from the inroads which liberty has occasionally attempted upon the rights and prerogatives of the crown.

Sir, I have followed the gentlemen over the extended field, which they have explored in the present debate, and lament that it should have been thought necessary to enforce their arguments, by impeaching the purity of your public functionaries. Imputations dark and vague have been, with a lavish hand, showered upon the legislative and judicial departments of your government. Even the sages and patriots of your revolution, have not escaped this contumely. The illustrious dead, who pillowed their heads for seven long winters upon the mountain snow; and bared their breasts during seven sanguinary campaigns, in the glorious struggle for American independence and freedom, have been upon this floor accused of profligacy and waste, and of having corruptly dissipated the funds of your state.

It is, sir, to me a subject of regret, that at a moment when a little ray of sunshine has broken through the clouds, which have long darkened your political horizon, to beam its genial warmth upon your citizens; it should have been thought discreet to scatter the seeds of distrust and suspicion, by representing your legislature as corrupt and profligate.

This Convention, sir, represents a moral and a thinking community—we come here, not as accusors, not to destroy, but to protect—not to attenuate, but to strengthen—not to innovate, but to reform. Therefore, it is neither salutary nor proper, to weaken the public confidence in a government, under whose auspices, by the blessings of Providence, your state, from the feebleness of infancy, has grown to the strength and stature of manhood. We have heard much of legislative encroachment; but not a word of executive combination. Can gentlemen refer us to a single incident, where the representatives of a free people have conspired against the liberties of their constituents? History records no such event; but her pages are filled with a long and black catalogue of executive usurpations.

We are now persuaded to distrust the honesty and discretion of the legislative power, and to improve upon the modern science of checks and balances—We are urged to place the public welfare in the safe keeping of the executive, who is to be made the constitutional organ of the public will, and the supreme judge of the public good.

Sir, the amendment of the honourable gentleman from Montgomery, comes to the committee in the spirit of conciliation; for by conceding two-thirds to all objections arising out of the constitution, it meets gentlemen who are in favour

of a strong veto more than half way, and if adopted, it would give to the executive an efficient control, which might at all times be fearlessly exercised under the same guarantee, of popular support and protection.

After all, sir, you may resort to your checks and your balances, and may rely upon the equipoise which you establish, to perpetuate your system; yet be assured, that the columns which support the temple of your freedom, derive their beauty and strength from the virtue and intelligence of the people. Corrupt that virtue, and obscure that intelligence, your checks are lost; and the fair fabric reared by the wisdom and sustained by the honesty of your sturdy ancestors, will crumble into ruins.

Should that evil day come upon you, to use the language of the honourable gentleman from Orange, you may then flee to the wilderness and resume the savage state, for the only alternative left you will be the melancholy privilege of kissing the thirsty sword of military despotism, or of seeking the mountain wilds as your city of refuge. I again repeat, sir, on that day which your citizens shall yield the reins to vice, and shall permit folly to usurp the seat of intelligence, liberty will be heard to shriek in the agonies of despair, and will be seen to drop a tear of bitter lamentation over the ashes of your republic.

Mr. Bacon said, that the only question now before the committee was, whether instead of adopting the proposition reported by the select committee, which makes two-thirds of each branch of the legislature necessary in all cases to the passage of a bill which has been returned with objections by the governor, (whether those objections relate to its constitutionality or its expediency) we should accept of the project moved by the gentleman from Montgomery, (Mr. Dodge,) which requires a concurrence of two-thirds, only when the objections are of a constitutional nature, but a bare majority when those objections relate only to its expediency.

As he had not been ambitious of taking a part in the interesting debate which had occurred on the general question which had been before them, because his aid had not been needed, merely for the sake of discoursing on matters and things in general, he should not now have risen had he not feared that there was something a little catching to some gentlemen on a first view of what the gentleman from Washington (Mr. Wheeler) had called a conciliatory proposition, and one which he seemed to think ought to unite all sides of the Convention in its adoption. He hoped we should not be so indiscreet as to sanction it, because it came under that guise. So far from conciliating his good will in its favour, he should of the two prefer to reverse the proposition, and require a majority of two-thirds where the objections related solely to the expediency of a bill, and a bare majority only when they were on constitutional grounds, and for this obvious reason;—constitutional difficulties it was always within the competence of the judiciary power to correct; and should a law clearly unconstitutional, at any time make its way through all branches of the legislature, there was still a redeeming power left by an appeal to the judiciary, through whose decision the law might be annulled, the great principles of the constitution preserved, and the sacredness of private rights effectually maintained. The worst that could happen, even were there no revisionary power to check the passage of an unconstitutional law, would be but temporary; and every error would ultimately be corrected, so soon as time and opportunity to test the objectionable principle was given by judicial interposition. Not so, however, when the question was one of expediency. There, the judiciary power could afford no relief, because with the exercise of discretionary powers in the other branches of the government, they could in no shape interpose in their judicial capacity. The act once passed, however prejudicial to private interests or public good, must have its full operation; and in many cases even its repeal could be of no avail to repair the mischiefs it might have occasioned, because from its nature it might be irrevocable. To say that hasty, ill-advised, and destructive acts were not to be presupposed of the representatives of the people, clothed with their power, identified with their interests, and thus, as some gentlemen maintain, being in truth the people themselves, was arguing against all experience and the most notorious facts. Who can shut his eyes against the occurrences which have taken place in various legislative assemblies in this country, which, even

while in their progress, were the subjects of wonder and indignation to every reflecting man who was not himself a party to them. He would not advert to any thing which had taken place in our own state in confirmation of this position. He thought it an invidious and indelicate task to allude to transactions, in which, perhaps, many who heard him, may have had a share,—of the merits of which, different opinions might still be entertained, and a discussion of which could have no good effect here. He preferred drawing his illustrations from other states, and from cases of the most notorious and unquestionable character. If we want examples of legislation, the most hasty, ill-advised, and destructive that can be well imagined, to the great interests of the community, let us look only to what has occurred within our own recollections in the great and enlightened state of Pennsylvania.

To relieve the pecuniary embarrassments of the people, and to put money in the pockets of every man who wanted it, the wise men of the legislature of that state took it into their heads, but a few years since, that the institution of a new brood of local banks in all parts of the state was necessary. A bill was suddenly pushed through both branches at one sweep, incorporating the round number of forty independent banks. A project which bore on the face of it the character of madness to every man, whose wisdom had not grown up within the walls of the legislative halls. It passed by overwhelming majorities both branches; and though resisted in every stage by the governor, and returned by him with objections that did the highest honour to his sagacity and independence, was again passed notwithstanding, by the same overwhelming majority in both branches:—and an act thus consummated, which has entailed increased distress upon that great community, and under the operation of which, they have ever since been bleeding at every pore; and yet Pennsylvania is a great and enlightened state—its representative bodies emanate from the people, and as gentlemen will have it, are the people themselves; and to predicate of their acts, either folly, rashness, or corruption, is the highest presumption—is an insult to the majesty of the people! And yet here is a case of acknowledged, and most notorious folly and rashness, if no worse; for corruption need not always be presumed, which even the constitutional veto of the executive was insufficient to check, although a majority of two thirds was necessary to its enactment.

Not to multiply numerous other cases of the same character, he would only call the attention of the committee to the famous Yazoo case in the state of Georgia, alluded to by another gentleman in a former stage of this debate, (Mr. Tallmadge.) An instance of an act granting away for a song, the great public domains of the state, under circumstances of the most gross corruption, passed by like overwhelming majorities in both branches, at first returned with objections by the executive; but with some small modifications again returned to him —pressed upon him by a current which he had not either the power or the firmness to resist; and which, left to the people, no other remedy but its forcible repeal by a subsequent legislature, and its destruction by the hands of the common hangman. Do cases of this sort afford any countenance to the idea, that either improvident or corrupt legislation is not ever to be supposed, or that a revisionary power in distinct hands is of too strong and dangerous a nature to be entrusted with any other branch of the government? Experience has proved that even on the ground on which it is proposed to be placed by the report of the committee, it is not always strong enough to effect its proper object. Let us not then weaken and narrow it still more.—But was there not danger of the results growing out of unrestrained and unchecked legislation on another ground, which, in the situation and circumstance of this extensive state, was more particularly to be guarded against? He meant that which grew out of local interests and combinations—an interest which was usually more deeply felt and more difficult to be resisted by the representative, than perhaps any other, and to which all communities, and more especially this one, were peculiarly exposed. It was true, as had been remarked, that the state had already parted with some of their great interests, which ought to have been cherished and sustained for the common benefit of the whole. But had they not in the mean time come into the possession of others, probably much greater? We have a most valuable

and increasing school fund which ought never to be diverted to local or partial objects. We have a general interest, as has been remarked by a gentleman from Saratoga, in those exhaustless salt springs, which are a source of permanent and increasing revenue to our treasury. Their consumption is mostly at present confined to the people in the western and northern districts of the state. It is not to be concealed that the population of those districts already exceeds the other portions of the state, and that they will of course return a majority in both branches of the legislature. Suppose that the people of those sections should take it into their head to relieve themselves from the duty now imposed upon salt manufactured at the state springs?—How many of their representatives would or could, long successfully resist their will?

Again—The state has a still greater, and, I might almost say, invaluable, interest in the future revenues to be derived from those great monuments of her pride and her wisdom, the western and northern canals. Suppose that the people of those districts should feel it to be for their particular interest to divert that revenue from the purpose to which it is very properly pledged, or after that pledge is redeemed to greatly diminish or entirely abolish the tolls, that their productions might pass upon them free? Is it certain that their representatives would withstand the pressure which might be made upon them for that object? Would it not be of vital consequence in the event, to the other sections of the state, that their interests should be guarded by a department who represented the whole state, was elected by no local views, and stood pledged to no narrow or partial objects? Will they feel that those interests are perfectly secure with a merely nominal control—a control over a bare majority of the legislature, acting under local views, and perhaps temporary excitements? This is no imaginary or highly improbable case, but one which may come home to the business and bosoms of a large portion of those who hear me, and of their immediate constituents, and is submitted to the serious consideration of those representing the ancient and respectable county of Suffolk, and the other seaboard and southern districts of the state. I repeat, therefore, that for all practical purposes, I should prefer to take the reverse of the proposition of the gentleman from Montgomery, and leave all constitutional objections to be settled by judicial interposition; but prefer intrusting both powers in the first instance to the revisory power of the executive, subject to be overruled by two-thirds of both branches as recommended by the committee.

A few words only on the ground of precedent. Most of the projects which we have before this had pressed upon us, have been more or less sanctioned by some precedent of some state or government in their favour. The one now under consideration is sustained by no one relative in any government of the nation, or of the world. Let us not, for the sake of trying some new experiment, or adding some new check to the machinery, hazard ourselves upon a distinction never before made, or upon a project which the accumulated wisdom of our country never before dreamed of.

The motion of Mr. Dodge was lost.

The question was then taken on the substitute reported by the committee to the third article of the constitution, and it was carried in the affirmative 100 to 17, as follows:—

AYES—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Breese, Briggs, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Case, Child, D. Clark, R. Clarke, Clyde, Cramer, Day, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunting, Huntington, Hurd, Jansen, Jay, Jones, Kent, King, Knowles, Lansing, Lawrence, Lefferts, M'Call, Munro, Moore, Nelson, Paulding, Pitcher, Platt, Porter, Pumpelly, Radcliff, Reeve, Rhinelander, Rockwell, Rogers, Rose, Ross, Russel, Sage, Sanders, N. Sanford, Schenck, Seeley, Sharpe, I Smith, R. Smith, Spencer, Stagg, Starkweather, Steele, I. Southerland, Sylvester, Tallmadge, Ten Eyck, Townley, Tripp, Tuttle, Van Buren, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, E. Williams, N. Williams, Woods, Woodward, Yates, Young—100.

NOES—Messrs. Carver, Collins, Dodge, A. Livingston, P. R. Livingston, Millikin, Park, Pike, Richards, Root, R. Sanford, Swift, Taylor, Tompkins, Townsend, Wheeler, Wooster—17.

The committee of the whole then rose and reported the same to the Convention.

Adjourned.

MONDAY, SEPTEMBER 10, 1821.

Prayer by the Rev. Mr. De Witt. The President took the chair at 10 o'clock, when the minutes of Saturday were read and approved.

THE LEGISLATIVE YEAR.

On motion of Gen. Root, the Convention resolved itself into a committee of the whole on the report of the committee to whom it was referred, to inquire into the expediency of establishing the commencement of the legislative year, and also whether any, and what alterations ought to be made in the term for which any elective officer may be elected, reported the following resolution—Mr. Sharpe in the chair.

The report was read in the words following :—

Resolved, That the following amendments, ought to be made to the constitution of this state, viz :—

And be it further ordained by the people of this state, That the general election for governor, lieutenant-governor, senators and members of assembly, shall be held at such time, in the month of October, or November, as the legislature shall direct, and the persons so elected, shall, on the first day of January following, be entitled to the exercise of their respective functions in virtue of such election.

The governor and lieutenant-governor, shall be elected annually, and senators for three years.

Mr. Tompkins moved to divide the subject, so as first to consider the proposed alteration of the term of holding the general election, and the commencement of the legislative year. Adopted.

Mr. Briggs moved to strike out the words "*October, or*," for the purpose of fixing the time of holding the election in November.

Gen. Root preferred that the report should stand as it does ; and let the people, through the legislature, fix the time of holding the election in October or November, at they please.

Mr. Briggs thought the time too indefinite. November, he said, would be the most suitable time to hold the election, especially for the farmers. If we leave it discretionary which month to take of the two, we may as well leave it altogether so.

The motion of Mr. Briggs was lost.

Mr. Lansing wished the phraseology of the report altered. He thought we had better preserve the words of the constitution—"*Ordain, determine, and declare in the name of the good people of this state.*"

Gen. Root preferred the language used by the committee in their report. The old constitution was made by the Convention and they of course used the language in the name of the people ; but this is to be made by the people themselves.

Mr. Fairlie thought it an improper time to discuss the phraseology. That will be settled hereafter, when a committee will be appointed to put the whole into a proper shape.

Mr. Lansing withdrew his motion.

Chief Justice Spencer spoke a few words in favour of the first part of the report of the committee. Too long a period now elapses between the election and the time of the meeting of the legislature ; and circumstances may occur

in which it would be improper for a member elected in April to take his seat in January. It is a settled maxim, that a legislative body should meet as soon after the time of its being elected, as possible.

Mr. Carver moved to strike out the words " *at such time in the month of October or November*," and insert, " *the last Tuesday in October*."

Mr. Fairlie thought this question had just been decided. The last Tuesday in October would be an inconvenient time, should the yellow fever prevail in the city of New-York. He inquired what would be the effect of this change, in regard to the choice of electors of president and vice-president?

Gen. Root said the Convention ought not to descend to legislative detail. For some time past the legislatures have been afraid to trust to the Convention; and now the Convention are afraid to trust to the legislature. As to the election of electors of president, he thought we ought not to interfere. He hoped the time was not far distant, when the people would have the right of choosing these electors, which has so long been usurped from them, restored.

The motion to strike out was lost, and the first part of the report of the committee carried unanimously.

Gen. Root then moved that the committee rise and report their agreement to the first proposition; for the purpose, when again in Convention, of moving to discharge the committee of the whole from the further consideration of the last part of the report, which relates to the term of service of the governor, lieutenant governor, and senators, with a view of referring the same to the committee of the whole, when on the report of the executive committee.

The motion was carried.

When the question on agreeing to the report of the committee of the whole, was put,

Chief Justice Spencer rose, and remarked, in substance, that he did not understand that the whole of the first paragraph of the report of the select committee, was adopted by the committee of the whole. He thought that the committee of the whole had agreed to no more than related to the *time* of holding the election; otherwise he should have proposed an amendment in regard to the present mode of canvassing the votes for governor and lieutenant governor. He thought the votes should be returned under seal to the secretary of state, who should deliver them over to the president of the senate, and they should be canvassed and declared in joint meeting of both houses of the legislature. The present method of canvassing he thought highly improper. Such an instance has never occurred in this state—but suppose there should be a tie in the votes of rival candidates. How should it be determined who should be the governor? There were many other evils incident to the present system; and there was difficulty in making decisions, in consequence of misnomers, mis-spelling, &c. For these and other reasons, the report of the committee of the whole ought either to be amended, or again sent back to the committee of the whole.

Mr. J. Sutherland said there was great force in the remarks of the gentleman last up; but he thought there was no connexion between the subject brought forward by him, and the report of the committee. His proposition should be attended to elsewhere.

Mr. Van Vechten moved to amend by striking out the word " *persons*," and inserting the words " *members of the senate and assembly*." The object was to have the term of service of the members of the legislature commence on the first of January, and to leave the term of service of the governor and lieutenant-governor to be fixed hereafter.

Gen. Tallmadge moved that the Convention disagree to the report of the committee of the whole, for the purpose of referring the whole matter to the executive committee.

Some desultory conversation ensued, when Gen. Tallmadge withdrew his motion, and the motion of Mr. Van Vechten was lost.

Mr. Swift moved to amend by striking out the " first day of January," and insert " first Monday of January." The official terms of the governor, &c. might commence on Sunday.

The President thought the amendment unnecessary. The official term of the governor had several times commenced on Sunday. This makes no difference.

Gen. Root said a few words in opposition; and the motion was withdrawn.

The report of the committee of the whole was then agreed to by the Convention.

On motion of Gen. Root, the committee of the whole were then discharged from the consideration of that part of the report of the select committee (relating to the annual election of governor and lieutenant-governor) and the same was referred to the executive committee: And the remaining part, (relating to the term of service of members of the senate) was ordered to lie on the table.

Mr. Sheldon then called for the consideration of the amendments of the rules and orders of the Convention, reported by the committee on that subject on Friday.

The amendments were, to expunge the 15th rule, and insert the following:

15. All questions, whether in committee or in Convention, shall be put in the order they are moved, except that in filling up blanks, the largest sum and longest time shall be first put.

And to add as rule 22d, the following:

22d. When a question is under debate, no motion shall be received, unless to amend it, to commit it, to postpone it to a day certain, for the previous question, or to adjourn.

These amendments were adopted.

THE EXECUTIVE DEPARTMENT.

On motion of Chief Justice Spencer, the Convention then resolved itself into a committee of the whole, on the report of the committee who were directed to enquire whether any, and if any, what alterations are necessary to be made, in that part of the constitution of this state, which relates to the executive department—Mr. Radcliff in the chair.

The report of the committee, (for which vide proceedings of Friday, page 86,) having been read—

Chief Justice Spencer moved an amendment as follows:

The returns of every election for governor and lieutenant-governor, or lieutenant-governor only, shall be sealed up and transmitted to the secretary of state, by the clerks of the several counties, directed to the lieutenant-governor, or president of the senate. The secretary shall, on the first day of the succeeding session of the legislature, deliver the said returns to the lieutenant-governor, or president of the senate, who shall open and publish the same, in presence of the senate and assembly, in joint meeting. The person having the highest number of votes for governor, shall be governor; and the person having the highest number of votes for lieutenant-governor, shall be lieutenant-governor; but if two or more shall be equal, and highest in votes, for governor, one of them shall be chosen by joint ballot of both houses; and if two or more shall be equal, and highest in votes for lieutenant-governor, one of them shall, in like manner, be chosen lieutenant-governor. Contested elections for governor or lieutenant-governor, shall be determined by both houses of the legislature, in such manner as shall be determined by law.

The Chief Justice observed, that the great power of deciding whether the governor was duly qualified to accept of the office, on account of his age, residence, and citizenship, should be referred to the immediate representatives of the people. Mr. S. said he did not wish to revive any feelings which were now slumbering in oblivion; but if it were necessary to enforce the principles contained in his amendment, he could refer to a period when a provision of this nature would have been important. The transaction to which he alluded was near shaking the state to its centre. There ought to be a right of enquiring into the qualifications of a governor elect. It had been said by a gentleman from Schoharie, (Mr. Sutherland) that the oath would be a sufficient guarantee. But others were interested in that question; and it ought not to be con-

clusive upon the people. He would fix the time of the session of the legislature in the manner that congress has fixed it; and the governor should enter upon the duties of his office at some convenient time after the meeting of the legislature.

Mr. Sheldon asked if the amendment proposed was not incongruous with the report of the committee?

The Chief Justice conceived not.

The question was taken on the amendment, and it was adopted—with an understanding, however, that the amendment should be printed, and reconsidered afterwards, if gentlemen should wish to take that course.

Mr. Tompkins moved an amendment in the second section, which related to pardons, so as to prevent the executive from extending pardons in cases of impeachment.

Chief Justice Spencer said that impeachment does not imply the conviction of a crime in the legal sense. After a public officer has been impeached, he is liable to indictment if the offence is criminal.

Mr. Tompkins assented to the correctness of the remark made by the gentleman from Albany. He thought, however, that in making a constitution, it was expedient, to make the instrument clear and explicit, and leave nothing to implication.

Mr. King thought that constitutions should be explicit; and moved an amendment in the phraseology, that he thought would meet the views of all parties. The suggestion was assented to.

Mr. Van Vechten read a clause from the constitution, and explained it. He assented to the remark of Mr. Spencer, that a person after impeachment was indictable and punishable, after removal from office.

Mr. King said that crimes of this kind were cognizable in two ways—first by impeachment, which goes to a removal from office, and future disqualification. Secondly, by indictment and conviction in courts of law. The governor ought not to have the power of pardoning in such cases. The president of the United States has not that power, and it is the only exception in the constitution, which denies to the president the right of pardoning.

Messrs. Spencer and Van Vechten both disclaimed having advocated the doctrine of giving the executive the power to pardon in such cases.

Mr. N. Williams was in favour of the amendment, and strongly urged the necessity of adopting it, from the circumstance that distinguished gentlemen disagree as to the true construction of the constitution. We did not come here to settle nice technicalities, but to amend the constitution so that all may understand it.

The amendment proposed by Mr. Tompkins, was adopted.

Mr. Russell moved to amend this part of the report by inserting after the word "*reprieve*," the words "*or commute the punishment.*" The object was to give the legislature the power to commute punishment—this power had formerly been questioned, particularly in the case of Stephen Arnold, twelve or fifteen years ago. Adopted.

Mr. Tompkins moved another amendment, authorising the governor to require the judiciary to report all the convictions with the minutes of, and that they be laid before the legislature.

Chief Justice Spencer said that the judges commonly submitted the minutes of testimony to the governor when pardons were solicited.

Mr. Van Buren thought such reports would be voluminous, without much benefit.

Mr. Tompkins explained and pointed out the inconveniences of the present practice, and observed, that under a new and different organization of the judiciary, the remote residence might render it more exceptionable.

Mr. Van Buren thought it was proper to strike out of the report that part which requires the governor to report to the legislature all the cases in which pardons have been granted, and the grounds upon which he proceeded; and therefore proposed to divide the question on the amendment offered by Mr. T. so as to have it first taken on striking out.

Mr. Sharpe was in favour of striking out—The executive was often imposed upon by the misrepresentations of persons who make it a business to procure pardons. It is sometimes a matter of policy to grant pardons, when the reasons ought not to be divulged. In many cases by granting a pardon to one villain, you lead to the detection of many others.

Mr. Edwards was opposed to striking out. He said, in substance, that by the indiscreet use of the pardoning power, the administration of justice had become so relaxed, that if not checked, we should soon have to erect state prisons in perhaps every county of the state. The exercise of the power of pardoning is pleasant—it is humane—it is agreeable to the best feelings of the human heart. But sad experience has taught, that the interests of the community require that the civil arm should be brought to bear with power upon malefactors. It was the remark of an eminent judge, now gone down to the grave, that mercy to the criminal, was cruelty to the state. If you exercise this pardoning power to the extent that has been done, what will be the consequence? The rest of society will be exposed to the depredation of villains.—The laws should be exercised with a strong and resolute hand. Our penal code is mild; and the measure of punishment is meted out to all, in the proportions they deserve. If a reasonable doubt exists, the felon is acquitted. But should he be convicted, there is still a discretion reposed in the court for his benefit. Why has the pardoning power been so fully and frequently exercised? Why are our prison doors so often thrown open, and villains let loose to prowl upon society? Is it because our executive has been too much influenced by feelings of humanity? The governor must nerve himself against their solicitations, and act with a consciousness that he must account to the people for the manner in which he uses this pardoning power. Even in Great Britain, a pardon never passes the great seal, without containing a recital of the causes for which it is extended. But in this state, they are granted without a single reason for it. And after the inhabitants of a county have exercised their vigilance in detecting the felon; after the jurors have convicted, and the judges sentenced him, the interposing hand of the executive rescues him from punishment. Unless we abolish this system, we may as well open the prison doors at once. They enter novices in iniquity, and remain just long enough to become professors of all its arts. This is the practical operation of the system; and unless we nerve ourselves against it, sooner or later the rights of the people of this state will be held by a most precarious tenure. This sickly sympathy is wearing away the foundations of our laws.—Placed here as one of the guardians of the rights and privileges of the people, I wish to have such a provision inserted in the constitution, as shall prove an effectual check upon vice.

Mr. Buel concurred in the sentiments advanced by his friend from New-York. He had seen the practical and pernicious effects of the lavish exercise of the pardoning power. He would not be understood to cast any imputation upon those on whom the exercise of it had devolved. It was doubtless intended to be exercised discreetly. But the executive was often imposed upon: and if compelled to record the reasons which induced him to grant pardons, he would be more watchful. The only objection of moment, which he could perceive, are the reasons of state that might occasionally require the exercise of this power. This, he thought, might easily be obviated, by the governor's making, in such cases, confidential communications to the legislature, which should not be entered upon the journals.

Chancellor Kent expressed his respect for the opinion of the gentleman who had last spoken; but he was in favour of striking out, as most conformable to sound policy. Pardons were often granted on the ground of humanity, and from the hope of reformation. Sometimes upon condition of leaving the state, and less often on account of dissatisfaction with the mode of conviction. He thought it inexpedient to require the executive to give his reasons. Important considerations might prevent the propriety of such a course. He recollected a case during the revolutionary war, in which a man was convicted of treason, or some other criminal offence, and pardoned on condition of his acting as a spy. To require a reason to be given in such a case would be impolitic; and it would be absurd to assign those general reasons to which he had before adverted.

An inflexible execution of the law he thought was impossible—particularly so when a felon is sentenced to imprisonment for life. Public indignation will be overcome by the stronger sympathies of our nature. The pardoning power will be assailed by the inspectors of the prison—by the friends and family of the convict; of the judiciary department, to which that power was formerly, in a degree, confided. In Europe, execution follows immediately upon conviction, and the criminal is removed forever from sight, before public indignation has subsided. But in this country a different practice has prevailed, and sympathy revives before the sentence of the law is carried into effect. Mr. K. thought it better to repose in the executive the exercise of this sound discretion. It was a sufficient check upon the government to report the names of the criminals—their crimes—the time when, and the place where, they were convicted.

Mr. Sharpe was of the same opinion. He said that a standing committee was appointed every year by the legislature on the subject of the penitentiary system; and a complete return of their condition was annually made to the legislature and referred to that committee. If, then, any special abuse was supposed to exist, that was a clue by which it could be unravelled. It was an important subject; and had deeply engaged the attention of the legislature. It had been said, and perhaps truly, that it cost the state more to keep a culprit in prison, than to educate a youth at college. But it was a state of things that was not perhaps susceptible of remedy. The state prisons were crowded, and sometimes from the apprehension of sickness, but more frequently from the former cause, it had been found necessary to grant pardons to the least guilty.

Mr. S. expressed his satisfaction that by a late act, they were employed on the canal. He hoped they might there do some good; and even should they escape, their escape would be less pernicious than their pardon; and every one that thus runs away, confers a blessing on his country. Mr. Sharpe thought the requirement to assign reasons for pardoning was unnecessary and impolitic, and he should therefore vote against it.

Chief Justice Spencer said that state prisons were instituted from a repugnance to sanguinary punishments. In the increase of population, crimes had naturally increased until our state prisons had become thronged. There was room for no more. Something, therefore,must be done; and the judges had found it necessary to recommend to the governor, from time to time, that the least criminal should be pardoned. If the plan of solitary confinement were adopted, the evil would in a great degree be diminished.

Mr. Fairlie suggested the expediency of modifying that part of the report, so that the legislature might require information from the executive, in relation to pardons, whenever they might deem it expedient.

Mr. Yates suggested a different modification; which

Mr. Tompkins said was out of order.

Mr. Nelson was not opposed to having the power of granting pardons lodged with the governor, provided the legislature might require information as to the reasons for granting such pardons, in cases where it should be thought expedient and proper. He mentioned instances of frauds that had been practised in procuring pardons. He thought the executive should state the reasons for granting pardons, give the names of those who solicited pardons for convicts, and what were their representations.

Mr. P. R. Livingston, on so important a question, was unwilling to give a silent vote. Experience has shown the present system to be unfortunate. There can be no question agitated in this Convention, of more interest to the people, at large, than that course of policy which is adopted in relation to that portion of the community who are preying upon the property and lives of the citizens. The great question here to be settled, is, whether you will incorporate into the constitution a check on that power, which we agree is wisely vested in the chief magistrate. The executive of the state is to see that your laws are executed, and the power of pardoning ought to be exercised somewhere, and I know of no place where it can be more safely vested than in the executive. It has been stated by the honourable gentleman from Albany, (Mr. Kent,) that feelings of humanity, and hopes of reformation, had influenced him to exercise

that power as extensively as he has; and it is that principle which he (Mr. L.) rose principally to condemn. Nothing has led this state into its present dilemma, with regard to its criminal jurisprudence, but the uncertainty of the execution of your laws. This sickly humanity has filled our prisons. If the governor had possessed no power to pardon, your prisons would never have been filled. Were he (Mr. L.) the governor, no person should go out of prison, unless doubts existed with respect to the justness of his conviction. Let the laws be exercised with certainty; let there be no hope of getting out until the expiration of the time for which they are sent, and much crime would be prevented. Require the reasons of the executive for granting pardons, and do you think he would dare say, "I pardoned on account of my tender feelings; or for mere speculation; or in hopes of reformation?" He would be cautious how he gave such reasons. The whole difficulty has grown out of uncertainty of punishment. Those who have been convicted, and sentenced for life, or for fourteen years, have had no expectation of remaining in prison for any length of time, because he had seen hundreds go and soon return. It would be wise, then, to make the chief magistrate assign his reasons. It is said that it would be burdensome to him, or that he might have reasons which it would be improper to disclose. He could not fancy a situation where he would be induced to pardon, and when the people ought not to know the facts. And there would be but little labour, were there not too many pardons granted; but under the present system, it would be very laborious, when from one to two hundred are pardoned in the course of the year. Mr. L. spoke of confiding this power to the legislature. It was but yesterday that the most abominable murder was perpetrated in Orange county. Neither judge nor jury doubted their guilt. But the sympathies were worked upon; it was thought it would be shocking to have five men hung; the men of property, the greatest villains escaped, and the poor chaps swung. It is as incorrect as can be, to extend this power to the legislature; the judge throws the responsibility upon the executive, and the executive upon the legislature, which is the worst of all. We must show the chief magistrate that the grand inquest of the people were about to look at him. He hoped that the part of the report of the select committee proposed to be stricken out, would be retained.

The motion to strike out was withdrawn, and Mr. Tompkins proposed another mode of amending, so as to compel the governor to assign his reasons, if required by either house of the legislature.

Mr. Edwards opposed the motion, and commented upon the power vested in the governor of granting pardons. It is nothing less than a dispensing power; a power that brought Charles I. to the block. The legislature pass laws; the community execute them, and the governor comes forward and dispenses with them. It is painful, it is true, for the sheriff to apprehend—for the jury to convict—and for the judge to pass sentence upon culprits. But the question is, shall the innocent portion of the community be protected or not? He quoted Judge Patterson upon this subject, and contended that mercy is often cruelty. We must protect our dwellings from the midnight incendiary, and secure the sleep of our wives and children. Mr. E. continued his remarks at some length, and contended that the humane course that has been pursued in regard to this subject, has stripped the state prison of its terrors. He would make stealing a losing concern. He would not have our laws for the punishment of offenders inoperative; and if we oblige the governor to give satisfactory reasons for extending pardons, he will grant with increased caution. Make him accountable for the exercise of this power, and he will look well to it.

Mr. P. R. Livingston contended, that if the amendment prevailed, it would defeat all the objects contemplated. What member of the legislature will get up and institute an inquiry into the governor's conduct? If any should do it, the enquiry would be defeated in nineteen cases out of twenty, unless they were very peculiar cases.

Gen. Tallmadge suggested another project, which was not pursued.

Mr. Sharpe supported the amendment; but

The question being taken, it was lost.

Mr. Yates then renewed his motion to insert the words, "*and by whom recommended.*"

After a few words from Messrs. Yates, Van Buren, and Fairlie, the amendment was lost.

Mr. Munro moved to amend by inserting the words: "and they [the legislature] may either pardon the criminal or commute his punishment, or "grant a further reprieve; and if they shall not do so before the end of that session, then it shall be the duty of the governor to issue his warrant, directing the "execution of the criminal."

Some conversation ensued between Messrs. Spencer, Platt, Munro, Van Buren, Fairlie, and Root, when the motion to amend was lost.

Mr. Briggs moved to amend, by striking out all the section after the word "*reprieve.*" He believed it unnecessary. The Convention came here to settle great principles—not to enter into details. This motion was lost.

Judge Platt said that one question presented itself, which he had entertained a hope would have been by some gentleman presented to the consideration of the committee; but as it had not yet been done, he felt it a duty to suggest it himself. He alluded to a part of the thirty-fourth and thirty-fifth line, in which he would move to strike out the words "murder or other crimes punishable with death." It must be expected, that the legislature will vibrate from one extremity to another. At the adoption of the constitution, not only treason and murder, but almost every other felony was punishable with death. When the governor was in doubt, he was authorised in referring the case to the legislature, whether the rigour of the law should be enforced, the punishment commuted, or a farther reprieve granted. According to this report, it will be in the power of the legislature to draw to themselves the pardoning power in any case which they may choose to make punishable with death. The dispensation of mercy is an appropriate duty of the executive alone, who superintends the execution of the law.

I beg leave, (said Mr. P.) to submit to the grave consideration of this enlightened Convention, the propriety of amending this part of the constitution, in a manner different from any yet proposed.

Instead of multiplying the number of cases for the consideration of the legislature, I would contract those limits. I would propose that the words "murder or crimes punishable with death," be stricken out. I am for giving to the governor the sole right, and upon his own responsibility, of pardoning for murder and all other crimes except treason, without the interference of the legislature. The case of treason is anomalous; it may involve questions of political expediency, very fit for legislative discretion. If severe punishment is ever inflicted, it should speedily follow the conviction, otherwise the salutary effects of the example is in a great measure lost. A short time is sufficient to excite public sympathy. In many instances where all would agree that the penalty of the law should be enforced, let it be suspended for six months, or a year, and the tender sympathies of our nature would convince us that it was a spirit of revenge to punish such a man. We soon lose our indignation at the *crime* and the *criminal;* and when the execution is long delayed, public detestation is directed against the *law* and the *executioner*. This is one reason why the governor ought to exercise this power, and exercise it definitively, to prevent the delay attending legislative interposition.

I have still a stronger objection to vesting this power in the legislature, except in cases of treason. I think that it would be exercised with more firmness and steady impartiality by the executive, than by the legislature, so long after a crime has been committed. A popular assembly is not a fit tribunal to determine in such cases. Suppose a man should be convicted of a crime, who had been an important and influential character in your state, what a spectacle would it present to see the legislature in stormy debate on the question, whether this man should be put to death. I cannot imagine any thing more improper, or any thing that would more probably excite intrigue and corruption. Take the humble and obscure individual, and it would be in the power of eloquence to excite so great a sympathy, as to produce strong doubts on the minds of such an assembly. In such cases, the appeals to our compassion would be so powerful, that a vote would generally be on the side of mercy.

I lay it down as a proposition, that whenever there are any serious doubts existing as to the propriety of putting a man to death, the sentence should never be executed, however, aggravated the circumstances. Now, if the governor may shield himself from that painful duty, by referring it to the legislature, they will naturally lean on the side of mercy ; because, in every case where the governor decides that the execution would be inexpedient, he intimates an opinion that the sentence ought not be executed. After that, in the most aggravated case, it would be hardly possible to find a majority willing to acquiesce in the propriety of enforcing the sentence. And thus, sir, in the case of murder, that most horrid crime, instead of meeting the most certain punishment, it is of all other crimes the most likely to escape punishment.

I am for giving to the governor the unqualified power of pardoning in all cases, except in cases of high treason.

Mr. Platt having concluded,

The committee rose and reported progress, and the Convention adjourned.

TUESDAY, SEPTEMBER 11, 1821.

Prayer by the Rev. Mr. Lacey. The President took the chair at 10 o'clock, when the minutes were read and approved. On account of indisposition, Mr. Kent was requested by the President to take the chair.

THE EXECUTIVE DEPARTMENT.

On motion of Mr. Sharpe, the Convention again resolved itself into a committee of the whole, on the unfinished business of yesterday—(the report of the executive committee,) Mr. Radcliff in the chair.

The amendment offered yesterday by Judge Platt, to strike out, so as to give the governor the power of extending pardons in all cases excepting treason, was under consideration.

Mr. Sheldon said a few words in explanation of the views of the committee, and against the proposed amendment. The governor, he thought, ought not to have the right of pardoning such foul offences. In all such cases, the culprit should die by the voice of the people. Mr. S. would take from the executive the responsibility and invidiousness which much attend this business.

Mr. Sharpe approved of the motion for striking out. We have but few capital offences punishable by death, and in such cases the sentences should be carried into effect. Experience has shewn that in almost every case, where sentences have been suspended by the governor, the culprit escapes by pardon, or commutation. Mr. S. alluded to several instances. The case of Diana Selleck, in New-York, was one. She had been sentenced to be executed ; but she was indisposed, and it was believed would soon die. Her execution was suspended ; and finally commuted for imprisonment for life. The cases of the prisoners a few years since in Oneida county, who set fire to the jail, and caused the death of one man, was also mentioned ; and also that of Conklin and others, in Orange ; in both of these cases, the punishment had been commuted by the legislature. It is well known at the present time, that if persons are sent to the state prison, they do not stay long. Sir, if we punish capital crimes with death, there ought never to be a commutation. The state prison at Auburn has already cost the state $300,000, and is not done yet. Sir, we must change the system. We have already got more rogues than buildings.

Chief Justice Spencer would make but a single remark. The framers of the present constitution, and the committee who made this report, did not intend to throw the responsibility of granting pardons on the governor. Mr. S. contended that a power to pardon for murder should exist somewhere, because there were many cases where it was highly proper. Persons might be drawn into the commission of crime. And there was a case eight or ten years ago, in Herkimer county, where a murder was committed by a boy only nine or ten years old. It was doubted by some, whether the child had a sufficient conscious-

ness of guilt, to make him liable for murder; but there were some circumstances of cunning and artifice in his conduct, which induced the jury to convict him; but the tenderness of his years, prevailed upon the legislature to commute the punishment. Mr. S. objected to continuing the power with the legislature, to give pardons; as it would not be so well discharged by a fluctuating power. The legislature will always be liable to act from sympathy. On the whole, he firmly believed that this prerogative would be more firmly executed in the hands of the chief magistrate, than by the legislature.

Mr. P. R. Livingston was in favour of the motion of the gentleman from Oneida. He adverted to the period when the present constitution was formed. The state was then in rebellion. Father was at variance with son, and the bands of society were torn asunder. The great family were disunited and unsettled in their political views. Prejudices and passions then prevailed, which have since subsided. The same state of things does not now exist; we are convened under circumstances the most favourable for remedying the defects of the constitution. By vesting the power of pardoning in the legislature, you violate one of the fundamental principles of your government. In the distribution of powers among the several branches, it is the province of the legislature to make laws—of the judiciary to interpret them—and of the executive, to see them carried into operation. The recommendation in the report of the committee contravenes this great principle. By vesting the pardoning power in the legislature, the same department which enacted the law, is also made the executor of it. You bring him back to that very power, which first determined, that for such an offence his life should be forfeit. How does this appear, in the present enlightened age? What is the situation of a citizen impeached for a crime? In the first place the grand inquest of the county is to present him; and they generally do it with caution and deliberation. He is then brought before a court, and tried by jury consisting of his neighbours, who are to pass on him according to law—he can almost defeat that panel if he pleases, by saying this man shall not pass on my life. If he has wealth, he can command the first talents in your state; if destitute of property, the judiciary see that he has the first of counsel. Nothing short of the most irreproachable testimony can convict him; and after all you have put it in the power of the chief magistrate, by the petition of his friends, and a supplicating community, to suspend his punishment for the interposition of the legislature.

It has been remarked by a gentleman from New-York, and truly, that when once the rope is suspended, it is a certainty, that death does not take place. You have seen the truth of this assertion too often—the two houses in collision, granting and bargaining, to kill one and save another. Suppose a case of this kind to be before the legislature, and it is decided that the criminal shall be executed, by a bare majority of the two houses—I ask, what will be the effect in the minds of the community? All their tender feelings will be exerted, and they will be doubting, whether he ought to be punished or not; and when these doubts are excited, the effect of punishment is destroyed.

I call the attention of the committee to the jurisprudence of England, to show the salutary effect of their criminal laws. I allude to the law relative to forgery, which, with the exception of one case, has never been pardoned. In this country, it is not a capital offence, and what is the effect? It is, that in this state, with a million and some hundred thousand inhabitants, there has been more forgery than in that great and populous nation, with all her commerce and variety of business, for the last century. Now what is the inference to be drawn from this great fact? It is this, that in England, a man knows the moment he is convicted of this crime, no earthly power can save him.

All cases of murder are cowardly acts; no brave man ever takes the life of another; and these very men, who commit such a crime, if they knew that they must be unerringly punished, would be very cautious how they render themselves liable. I lay it down as a principle, that when your laws are wisely executed, no man will escape the judgment of the law. But as they are now executed, every murderer will have the expectation of being thrown upon the legislature, and there have his punishment commuted. They are to examine the case from the outdoor recommendation of his friends. Your legislature is made

up in part of quakers, and many others whose consciences tell them it is not right to take life. The important point in criminal law, is to make punishment certain. When a criminal is convicted, let him understand that there is no hope of pardon, and then your laws will have a salutary effect. I hope the amendment proposed by the gentleman from Oneida will prevail.

Chief Justice Spencer said, there was one remark he had intended to make when up before. It was in relation to the case, which occurred in Orange county. Four persons were convicted of the murder, and sentenced to be executed. The case was brought before the legislature. There was a dread responsibility; and if no such power of reference had existed, they must all have been executed. Mr S. concluded by remarking that the certainty of punishment is the only sure prevention of crime.

Gen. Root said, he was willing to go part way with the gentleman from Oneida (Mr. Platt) in his motion, that the governor might possess the power of pardons, in cases of capital punishment, as fixed by our criminal code. He did not wish the Convention to interfere with the business of the legislature. We leave the crime of treason in the constitution, when such a crime cannot be committed in this state, until it resolves itself into an independent sovereignty. Take the constitutional definition of treason, as in the constitution of the United States, and you will find that treason against this state would be treason against the United States; and that being the greater power, the treason against this state would be merged in the former. But the governor, it appears from the amendment of the gentleman from Oneida, is to be invested with absolute power of pardon in case of murder, and for the reason that the legislature have improperly exercised that power. It has been said that this merciful prerogative has been so extensively used, as to be dangerous, and must therefore be vested in the governor alone. And it is because some quakers, and some who do not believe that life ought to be forfeited by any criminal acts, have obtained seats in the legislature. How numerous, he asked, were persons professing this creed? He believed they never had a majority in the legislature. But we had had two governors in succession, who, at the opening of the legislature, declared in their speeches, that because an individual could not lawfully take away his own life, he could not surrender his right to others of taking it away. Yes, two of your governors have gone largely into the views of Beccaria. Then it follows, if these governors believed that society could not take away the life of its members, he is conscientiously bound to pardon. But there was once a difference in sentiment, between the houses of the legislature, in the case of Conklin, whether he should be sent to the state prison or executed. Does it follow because a strong press was made on the legislature to preserve the life of this respectable man, that an equal press would not have been made on the governor? and would one person be more sturdy in resisting such an influence, than a majority of the legislature? Sir, a governor would have more inducements to yield, than the legislature, when assailed by men of influence, who would command votes at elections, to say nothing of pecuniary advances indirectly made; and virtuous indeed must that chief magistrate be, who would not bend to such importunities. Then the wealthy and influential will employ counsel, and that counsel may be a favourite of the governor; and the time may arrive, when the governor, not having offices enough to bestow on those about him, will be glad to avail himself of such means of acquiring popularity. But the certainty of punishment is the strongest preventive of crimes. Cases of the malefactors in Oneida had been alluded to. Would any one say those five ought to have suffered death? Two of them had confessed, that one of them had endeavoured to dissuade them from the commission of the crime.—Should he have been executed because he was found in bad company? And further, the legislature commuted the punishment from the consideration that they did not intend to commit murder; but they were perpetrating an unlawful act, to wit, the burning of a jail to effect their escape. A man was killed, and by their being engaged in an unlawful act, the crime was murder. Mr. Root extended his remarks much further; and contended that neither they, nor the poor ignorant negro, who was hired to kill Freeman, in Orange county, should have been executed. There was the case of the poor Irishman in New-York, who came home in a fit

of intoxication. He cuffed his wife's ears for her insolence. She fell on a broken kettle and was killed. It was too bad to hang him for that.

It has been said, give the governor the bitter with the sweet. No, sir—no bitter which would give power over votes. The gentleman from New-York, (Mr. Sharpe,) has said that the suspension of an execution is equivalent to an escape. It is not so—our statute books will show several instances in which acts have been passed ordering executions.

He had several times voted in favour of such acts. There was a case in Washington county some years since; and one in Schoharie, (that of Kesler,) not long ago. The legislature will generally act about right, unless a press is made upon them, as in the case of Conklin; and would not an equal press be made on the executive in similar cases?

Mr. Van Buren observed that he did not rise to enter into a discussion of the main question before the committee. His only object was to correct the statement of the case (Conklin's) from the county of Orange, which had been alluded to. It had been misconceived, and was a peculiar case. No respite had been granted by the executive—but those convictions were had during the session of the legislature. It had been his official duty to assist in their conviction, and to vote upon their application in the senate.

Instead of *five*, there were only *four* convicted; one of whom was pardoned—a negro who had been used as a witness for the state, and who, therefore, was entitled to expect a pardon; two were executed; and the fourth, (Conklin) obtained a commutation to imprisonment for life. Much has been said of the wealth and influence of Conklin. It is a mistake. He had a small farm, much encumbered, not worth more than one thousand dollars, and his influence was very limited. He was a man of violent passions, and was drawn into the perpetration of the crime by Teel, his brother-in-law, who expiated his guilt on the gallows.

This explanation he deemed it his duty to make in justice to the legislature; for it might otherwise go forth to the world, that the prerogative of mercy had been exercised in an unwise and indiscreet, if not in a profligate manner.

Mr. P. R. Livingston did not wish to re-examine the merits of the cases that had been referred to. The Convention had not, and could not, have the proper evidence before them, to enable them to act. He was moreover opposed to resort to insulated cases to settle general principles. Such cases were usually exceptions from general rules, and if made the basis of their doings, might lead to pernicious results.

In reply to an observation of the honourable gentleman from Delaware, (Mr. Root) that two governors had assumed the principles of the marquis of Beccaria, he would make a single remark.

The governors were doubtless actuated in their conduct by conscientious motives; and if they would act so in one case, they would in another. They were sworn to execute the laws, that were of paramount obligation, and which they would feel themselves bound to obey, whatever might be their private opinions.

The motion to amend was divided, and on the question being put to strike out of the report the words "*or punishable with death*," it was carried.

The other proposition further to strike out of the report the words "or murder," being about to be put, the ayes and noes were called for by Mr. Root—when

Mr. N. Williams rose, and observed that he could see no difference between referring to the executive the pardoning power in cases involving the same punishment. Yet if there were a difference, he thought it was in favour of referring it in cases of murder. In such cases, involving the deepest guilt, there was the greatest probability of public excitement, and individual exertions to screen the criminal from punishment. The responsibility ought to rest where there is least danger of such excitement interfering with the discreet course of public justice. It is undoubtedly true, that by transferring this prerogative to the executive, you increase his power. It is one that he will hardly receive with complacency; but if he is bound to exercise it, he will, when acting on his responsibility, be circumspect and guarded.

In the present state of things, a reprieve and suspension by the governor, amount to a recommendation for a pardon. At least it implies a doubt; and as had been observed, where doubt exists, there should be no execution. The governor is placed in a responsible situation. Should he act with obduracy on the one hand, or with weakness on the other, he is equally amenable at the bar of public opinion. But it is otherwise with the legislature. That body will always act, more or less from impulse. Feeling is communicative; and from the countenance are borrowed both tears and smiles. Such a body is not the proper sanctuary of justice.

Chancellor Kent rose reluctantly to express his ideas relative to the question before the committee. It was worthy of consideration, however, that not only the constitution of the United States, but the constitution of every state in the union, save one, had, except in case of impeachment, vested in their executives the power of pardon after conviction. It was peculiar to this state, and against the general sense of the world, to transfer that prerogative to a popular assembly.

It was altogether desirable, that the condemnation of a delinquent should be *unanimous*. Such was the general tenor of our laws. The grand jury, sitting in secret, must have a majority to indict:—The petit jury must be unanimous to convict—and the court uniformly charges the triors, that if a reasonable doubt exists in any of their minds, as to the guilt of the accused, they are upon their oaths, for such is the law, bound to acquit. After all these forms; after this uniformity of condemnation that pervades every class of those to whom the question of his guilt is committed, si it expedient, or wise, to refer the subject to a popular assembly that is governed by a majority—to be wrought upon by influence, acting without evidence, and beyond the reach of responsibility? The whole tenor of our system is opposed to it; and instead of conducing to the purposes of public justice, it was calculated to create not only delay which brings sympathy into action, but *doubt*, which of course defeats all the salutary influences of example.

The question was then put, and decided in the affirmative.—Ayes 89, noes 29, as follows:—

AYES.—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Bowman, Breese, Briggs, Brinkerhoff, Buel, Burroughs, Carpenter, Carver, Child, D. Clark, R. Clarke, Clyde, Cramer, Day, Dubois, Edwards, Fairlie, Fenton, Ferris, Fish, Frost, Hees, Howe, Humphrey, Hunter, Hunting, Hurd, Jansen, Jay, Jones, Kent, King, Lansing, Lefferts, A. Livingston, P. R. Livingston, M'Call, Munro, Nelson, Paulding, Pitcher, Platt, Porter, Pumpelly, Rhinelander, Rockwell, Rogers, Rose, Rosebrugh, Ross, Sage, Sanders, Sanford, Schenck, Seaman, Seely, Sharpe, I. Smith, Spencer, Stagg, Starkweather, D. Southerland, I. Sutherland, Swift, Sylvester, Tallmadge, Taylor, Tripp, Tuttle, Van Buren, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wheaton, E. Williams, N. Williams, Woods, Wooster.—89.

NOES.—Messrs. Brooks, Collins, Dodge, Eastwood, Hallock, Hogeboom, Hunt, Huntington, Knowles, Lawrence, Moore, Park, Pike, Price, Richards, Root, Russell, N. Sanford, Sheldon, R. Smith, Steele, Ten Eyck, Townley, Townsend, Van Fleet, Van Horne, Wendover, Woodward, Young—29.

Mr. Russell then moved an insertion, the purport of which was, to vest in the executive the power of commutation.

The motion was opposed by Messrs. Van Buren, N. Williams, Platt, Sharpe, and Tompkins; and supported by Mr. Spencer, and the mover, when the question thereon was taken, and the motion lost.

Mr. N. Sanford then moved to add at the end of the Report, the following words—"and he shall hold no other office or trust whatever." Carried.

Mr. Tompkins then proposed to vary the form, but retain the object of his motion of yesterday, in relation to the requisition upon the executive to make report of his exercise of the pardoning power.

After some desultory debate upon its phraseology, it was presented to the committee in the following form:

And it shall be the duty of the person administering the government of this state at all times to communicate to the legislature such information in relation to the execution of the laws, and the discharge of the duties of the executive department, as without public inconvenience may be requested by the legislature.

A debate of considerable length ensued, in which Messrs. Munro, Tompkins, Ross, Briggs, Jay, Sheldon, Van Vechten, Sharpe, Van Buren, King, Root, and Tallmadge, took part.

The question was divided ; and the motion for striking out was carried without a division.

On the question of inserting the words, as proposed by Mr. Tompkins, the proposition was lost.

Mr. Duer then moved to strike out the words " seat of government"—in the first part of the report, and to substitute in lieu thereof the words " office of governor."

The object of the motion was to avoid the ambiguity which at present existed in the constitution, and to provide against a recurrence of those doubts which existed at the time our present chief magistrate was first elected.* Carried.

A motion was made by Mr. Tompkins, that when the doings of the committee of the whole should be reported to the Convention, the same, so far as relates to the duration of the executive term of office, shall be reported in blank.

And after a discussion thereof by Messrs. Tompkins, Briggs, Root, Sharpe, N. Williams, Spencer, and Cramer, the same was withdrawn.

Whereupon the committee rose and reported progress and obtained leave to sit again.

The President having resumed the chair, on motion, the Convention adjourned.

* It will be recollected, that when Gov. Clinton was first elected, the election took place in consequence of the resignation of Gov. Tompkins, who had been elected Vice-President. Many people supposed, that under our constitution, a new election could not take place, until the expiration of the regular term.—*Reporter.*

WEDNESDAY, SEPTEMBER 12, 1821.

Prayer by the Rev. Mr. Mayer. The President took his seat at 10 o'clock, when the minutes of yesterday were read and approved.

A memorial was presented from the coloured people of the city of New-York, praying that the Convention would incorporate a provision in the constitution, preventing the legislature from passing any laws interfering with their rights, by requiring them to be registered, &c. previous to being allowed to exercise the right of suffrage. Ordered to lie on the table.

Mr. N. Sanford, from the committee appointed to consider the right of suffrage, and the qualifications of persons to be elected, reported, that the committee having considered the subjects referred to them, recommend the following amendments to the constitution :

§ 1. Every white male citizen of the age of twenty-one years, who shall have resided in this state, six months next preceding any election, and shall within one year preceding the election, have paid any tax assessed upon him, or shall within one year preceding the election, have been assessed to work on a public road, and shall have performed the work assessed upon him, or shall have paid an equivalent in money therefor according to law, or shall within one year preceding the election have been enrolled in the militia of this state, and shall have served therein according to law, shall be entitled to vote at such election, in the town or ward in which he shall reside, for governor, lieutenant-governor, senators, members of the assembly and all other officers, who are or may be elective by the people.

§ 2. Laws shall be passed, excluding from the right of suffrage, persons who have been or may be convicted of infamous crimes.

§ 3. Laws shall be made for ascertaining by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established. The legislature may provide by law, that a register of all citizens entitled to the right of suffrage, in every town and ward, shall be made at least twenty days before any election; and may provide that no person shall vote at any election, who shall not be registered as a citizen qualified to vote at such election.

§ 4. The existing qualifications for the right of suffrage are abolished. The oath or affirmation of allegiance, which may now be required from an elector, is abolished.

§ 5. No citizen entitled to the right of suffrage, shall be arrested for any civil cause, on any day or days of an election.

§ 6. All elections by the citizens shall be by ballot.

§ 7. Members of the legislature, and all officers, executive and judicial, shall, before they enter on the duties of their respective offices, take the following oath or affirmation:

You do solemnly swear, (or affirm, as the case may be) that you will support the constitution of the United States, and the constitution of the state of New-York; and that you will faithfully discharge the duties of the office of——according to the best of your ability.

And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

The report having been read, on motion of Mr. Sanford, was committed to a committee of the whole, and ordered to be printed.

Mr. Jay thereupon moved that the petition from the coloured people, be committed to a committee of the whole, when on the report which had just been read. Carried.

Mr. Wendover moved an amendment to the rules and orders of the convention, which he had had in view for more than a week, the object of which was to prevent the division of a motion to strike out and insert—in other words to render a motion of that kind in all cases indivisible.

The motion was supported by the mover, together with Messrs. Root and Tallmadge, and opposed by Messrs. Briggs and Sheldon. It was finally adopted.

THE EXECUTIVE DEPARTMENT.

On motion of Mr. Russell, the Convention then again resolved itself into a committee of the whole, on the unfinished business of yesterday, (the report of the committee on the executive department)—Mr. Radcliff in the chair.

Chief Justice Spencer moved to strike out after the words declaring the governor to "be commander in chief of all the militia," the words "*and admiral of the navy* of this state. Carried.

Chief Justice Spencer suggested the propriety of striking out from the report of the committee, that part which goes to prohibit the governor from being eligible for more than eight years out of ten. It was the understanding yesterday, he believed, that that part of the report which relates to the term of office, should be read in blank, until we saw what would be the other provisions of the constitution. This part should be passed over with the same view.

Gen. Root thought, as the committee of the whole had yesterday asked and obtained leave to sit again, that the whole report was again before the committee, and we should so act upon it. He continued his remarks a short time, and observed, that as the governor was no longer *lord high admiral of the navy*, it ought not to be in his power to stand on the quarter deck, and turn the representatives of the people out of doors. He concluded by moving to strike out that part of the report which continues to him the power of proroguing the legislature.

Mr. Van Buren called for a division upon this question; which being taken, was declared to stand as follows:

AYES—Messrs. Breese, Brooks, Carver, D. Clark, Clyde, Collins, Cramer, Day, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Ferris, Frost, Hunt, Hunting, King, Knowles, Lawrence, A. Livingston, P. R. Livingston, M'Call, Moore, Park, Paulding, Pitcher, Porter, President, Price, Pumpelly, Rhinelander, Richards, Rockwell, Rogers, Root, Rose, Rosebrugh, Ross, N.

Sanford, R. Sanford, Sharpe, Spencer, Steele, D. Southerland, I. Sutherland, Swift, Taylor, Townsend, Tripp, Van Buren, Van Horne, Verbryck, Wheaton, Woods, Woodward, Wooster, Yates—59.

NOES.—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Bowman, Briggs, Brinkerhoff, Buel, Burroughs, Carpenter, Case, Child, Dodge, Fenton, Fish, Hallack, Hees, Hogeboom, Howe, Humphrey, Hunter, Huntington, Hurd, Jansen, Jay, Jones, Kent, Lansing, Lefferts, Munro, Nelson, Pike, Platt, Reeve, Russell, Sage, Sanders, Schenck, Seaman, Seeley, Sheldon, I. Smith, R. Smith, Stagg, Starkweather, Sylvester, Tallmadge, Ten Eyck, Townley, Tuttle, Van Fleet, Van Ness, Van Vechten, Ward, A. Webster, E. Webster, E. Williams, N. Williams—59.

The vote being equally divided, the chairman, (Mr. Radcliff,) gave the casting vote in the affirmative.

Chief Justice Spencer called the attention of the Convention to the amendment which he had proposed on the 10th inst. It was then adopted, but as few had voted on the question, and as some gentlemen wished that vote reconsidered, for the purpose of giving it further attention, he had no objection.

On motion of Mr. Van Buren, the Convention thereupon voted to reconsider.

The amendment was read in the words following :

The returns of every election for a governor and lieutenant-governor, or lieutenant-governor only, shall be sealed up and transmitted to the secretary of state, by the clerks of the several counties, directed to the lieutenant-governor, or president of the senate. The secretary of state shall, on the first day of the succeeding session of the legislature, deliver the said returns to the lieutenant-governor, or president of the senate, who shall open and publish the same, in the presence of the senate and assembly, in joint meeting. The person having the highest number of votes for governor, shall be governor ; and the person having the highest number of votes for lieutenant-governor, shall be lieutenant-governor : but if two, or more, shall be equal, and highest in votes, for governor, one of them shall be chosen by joint ballot of both houses of the legislature ; and if two, or more, shall be equal, and highest in votes, for lieutenant-governor, one of them shall, in like manner, be chosen lieutenant-governor. Contested elections, for governor or lieutenant-governor, shall be determined by both houses of the legislature, in such manner as shall be prescribed by law.

The Chief Justice spoke some time in favour of the adoption of the amendment. He contended that it was not a new proposition, as the same provision exists in the constitution of the United States, and in the constitutions of several of the states, which he enumerated. He endeavoured to show the impropriety of entrusting the canvassing of votes to executive officers, who have no discretionary powers, and alluded to several instances to illustrate his argument.—Among them, he spoke of the loss of votes at the last governor's election, and at the late congressional election in the first district, in consequence of their being mis-spelt. He also mentioned the Otsego votes for governor, which were burnt many years ago.

Mr. King made some remarks in reply, which the reporter could not hear. Some considerable debate ensued, in which Messrs. Spencer, Van Buren, Edwards, and Root participated.

Gen. Root proposed to divide the question, by taking it first on all that part preceding and including the words "*shall be lieutenant-governor.*" This part he hoped would be negatived ; and as for the remainder he would vote for it.

Mr. Briggs proposed an amendment, so as to require a majority of the whole number of votes to make an election. Declared to be out of order, and the motion was withdrawn.

Mr. P. R. Livingston spoke some time against the amendment; when

The question being taken on the first part of the amendment, as proposed by Mr. Root, it was lost.

Mr. Edwards then moved a substitute for the remaining part of the amendment, directing the contested elections for governor and lieutenant-governor, shall be decided in a manner to be provided for by the legislature.

Chief Justice Spencer could in no way assent to this proposition, as it did not meet the object he had in view.

A long and desultory debate ensued, in which Messrs. Van Buren, Spencer, P. R. Livingston, King, Yates, Russell, Kent, I. Sutherland, and Root, were respectively engaged. Various modifications were suggested; but the result was, that the whole amendment, as proposed by Mr. Spencer, was lost, and nothing was substituted in its place. The vote stood as follows:

NOES—Messrs. Briggs, Brooks, Buel, Burroughs, Case, Collins, Cramer, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fenton, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunter, Hurd, Jansen, Knowles, Lawrence, A. Livingston, P. R. Livingston, Munro, Moore, Nelson, Pike, Porter, President, Price, Pumpelly, Reeve, Richards, Rockwell, Rosebrugh, Ross, Russell, Sage, Schenck, Seeley, Sharpe, Sheldon, R. Smith, Steele, D. Southerland, I. Sutherland, Swift, Tallmadge, Ten Eyck, Townsend, Townley, Tripp, Tuttle, Van Horne, Verbryck, A. Webster, E. Webster, Woodward, Wooster, Yates—64.

AYES—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Bowman, Breese, Brinkerhoff, Carpenter, Carver, Child, D. Clark, R. Clarke, Clyde, Fairlie, Ferris, Fish, Hees, Hunt, Hunting, Huntington, Jay, Jones, Kent, King, Lansing, Lefferts, M'Call, Park, Paulding, Pitcher, Platt, Rhinelander, Rogers, Root, Rose, Sanders, N. Sanford, R. Sanford, Seaman, I. Smith, Spencer, Stagg, Starkweather, Sylvester, Taylor, Van Buren, Van Fleet, Van Ness, S. Van Rensselaer, Van Vechten, Ward, Wendover, Wheaton, E. Williams, N. Williams, Woods—57.

Gen. Root, then called the attention of the Convention to the subject of fixing the provision as to the term of service for which the governor should be elected. He moved to strike out from the report of the committee the words *two years* and insert the words *one year.*

Mr. Fairlie moved to fill the blank with *three years.*

Mr. Wendover wished to retain the words *two years.*

Gen. Root said, a number of propositions had been made, viz. to fill it up with one year, with two years, and with three years. He presumed, therefore, that the range of time would be from one to three years, inclusive.

That the blank ought to be filled with one, he had no question.

It is a principle, said he, in republican governments, that elections should be frequent, for the purpose of insuring the people against improper execution of the trust reposed in their public functionaries. Republican governments are no better than monarchical, only, that the public agents are responsible to the people, and are frequently brought under their review, for the approbation or disapprobation of their respective duties. If our government is preferable to an aristocracy, or monarchy, it is on account of our frequent elections, by which the people have some security, that their agents will be faithful and act in conformity to their will. The longer the term of service, the further are they removed from the people, and the less they feel their responsibility to them. Give them a long term of service, and there is nothing but their honour, and a sense of their respective stations, to govern their conduct, except the dictates of morality and religion. They would be equally bound to have the good of the people in view, in a monarchial government.

The law of power will permit any individual to exercise that power to illimitable extent, unless restrained. It has been shewn, and proved by experience, that the most powerful restraint is a responsibility to the people by frequent elections.

The objections that will be urged to an annual election, unquestionably will be, that they will cause too much and too frequent agitation in the community. You will permit me to ask you, whether, if this argument is entitled to any regard, it should not be extended to a longer time than three years. If it is to avoid agitation and confusion, that you are to fix it at three years, why not extend it to seven or ten years, and then for life, in imitation of the French republic. In my judgment, this is fallacious reasoning, to suppose that these triennial elections would cause more ferment, than one annual election. Look

at other states—Pennsylvania and New-York elect triennially, and where is there as much ferment in any other state? In the eastern states, where they elect annually, they have not half the ferment that we have in this state.

Has this state been more agitated by party than other states? No, it has been the excresences of party, that have split her up more than other states; and it may, probably, be imputed to our triennial elections. But the two great parties which have existed for almost half a century, have gone as great lengths in other states as in ours. In Massachusetts they have raged to greater excess than we ever did in this state, and during the war with greater violence than they ever dared to here. It was not to see who should be governor, but to see who should prevail, the peace, or the war party.

There must be some ferment at an election, and we have a right to expect it, if it was only to elect a constable. Having elections annually, the public mind will not be half so much enraged, as to have them triennially. I do not believe that at these annual elections there would be half as many lies told, or that they would be half so stoutly told. More faction would generate in one triennial election than in three annual. It is in the moral world, as in the physical—let Vesuvius groan for years under the influence of her internal heat, what would be the eruption? The consequences have been witnessed, under such circumstances, by her lava overwhelming cities and villages; and carrying terror and dismay in every direction.

When the eruptions are frequent, they carry no terror or alarm; and sometimes they are beneficial, by fertilizing the state: So with your political eruptions—they add vigour to your body politic without destroying it—so party heat is beneficial, if not kindled into a blaze, but permitted, like a gentle fire, to dispense its worming influence. Is it desirable that these embers should be smoking and kindling for three years, and then break out into a devouring flame?

It appears to me to be sound policy, to have an election annually. Sometimes an election to office may be effected by surreptitious measures, and when effected, there could be no relief till the expiration of the three years; but if the election was annual, at the end of a year the people could come forward, and by their ballot boxes show that they had been deceived. If it is extended to three years, the electors will be in a great measure changed, some will have gone to foreign states, others to the tomb; and new ones will have arisen, who will not feel that indignity due to their deceivers.

I move that the blank be filled with one year.

Mr. Cramer. I must in duty to myself express my sentiments upon this subject. It is time for us to consider what powers we have given, and mean to give, to the governor, and for what purposes. He has the powers of veto, of pardon, and will probably have others of appointment. I have voted for the first two, not to give him power to protect himself, the judiciary, nor of any man in authority, nor for the sake of providing for hungry expectants of office; but to be exercised for the benefit of the people. I have not delegated this power, for the purposes of indulging the sympathies of his heart, or of rewarding contractors; but to protect the citizens against midnight murder, and the torch of the incendiary. I am willing to delegate the appointing power to him, not to reward sycophants and flatterers; but for the purpose of appointing to office men of talents and integrity, who will discharge their duty with a single eye to the public good.

I lay it down as a maxim, that as you increase power, you increase accountability. Let us render him accountable to the people, and frequently. Is this assembly less likely to act discreetly and wisely, because the people have a revision over us? No, sir; I rejoice at it—it will prevent many bad amendments—it will teach us to leave untouched that which the people have not complained of. Settle with your governor often—short accounts make long friends—but leave him in power two, four, or seven years, and both crimes and virtues are difficult to be tested. Frequency of election influences the habits and understandings of the people in a variety of ways. It enables them to discharge their duty with the same deliberation with which they discharge the ordinary business of life; and it renders them less liable to the intrigues and misrepresentations of artful and designing men. Office is the mirror in which men are

seen as they are; not as they profess to be. How often do we see men, who, in private life, make a boast of their attachment to our democratic institutions, when in power, belie their professions. Office is a political barometer, in which not only the intrinsic weight, but the value of the officer, is tested. If he stand the test—if he be a faithful shepherd—if he has honestly discharged his duty, the people are to be trusted—they will not be unjust to themselves, nor to a faithful servant. But if he has proved himself an unfaithful steward—if he be a cold, sordid, calculating wretch, without one generous emotion, without one tender sympathy, aiming at personal aggrandizement alone—if he should have removed from office men whom the people delight to honour, men whose talents and integrity would do honour to any age or country, and substitute men corrupt, profligate, and abandoned, literally wanting principle, and wanting bread—if he have disgorged that Pandora's box of the state prison on the people—if he have sanctioned unjust laws, or withheld his sanction from beneficial laws, which he himself had recommended, would it not be a consolation to every patriot in the country, that there was a redeeming power in the people, and that power near at hand?

It may be objected that a short term takes away the independence of the governor. There are two sorts of independence—one to be commended, the other to be deprecated. That which arises from a fearless boldness of doing right at all hazards; that which arises from a sense of moral obligation; that which arises from a still stronger and more sacred tie, that which arises from a religious obligation, which binds man to eternity, and whispers to him every step he takes, that there is an accountability hereafter. This is the independence I prize; the independence I wish to see exercised. But that independence which arises from the multiplication of power, from the perpetuity of office, and from independency of circumstances, is the same independence which a Bonaparte once wielded over his subjugated provinces; the same independence which the legitimate royal robbers of Europe, now wield over their degraded subjects. It is that independence, which I trust I shall never live to see any man wield over the destinies of this country. It is that independence, to resist which, every honest man in this community should place himself in the last bulwark of liberty, over which a Cæsar or Cromwell must pass, ere he arrived at that fatal independence. I therefore am for the shortest period.

Mr. N. Williams, on rising observed, that he was impressed yesterday, when this subject was introduced before the Convention, with the importance of having all the plans of the different departments of the government brought under review, before deciding on the present question. It would be difficult to make a perfect whole, as a government should be, without adopting this course; and he could not conscientiously vote without knowing, in some degree, what the whole structure was to be.

He was of the opinion, he said, that the legislative departments were intimately connected with the executive, and that the powers to be given to the governor, and the duration of his term of service, ought very much to depend on the construction and powers of the former; more especially of the senate. If that body could be made what he ardently hoped it would be, it was far less important whether the executive term should be fixed at three, or a less number of years. Give us a senate, sir, he said, that will insure to the people of this state as much integrity and firmness, wisdom and experience as the present state of human nature will admit of, and he would not be very solicitous about the result of the question now under discussion.

We have been referred, he said, to other states for a precedent and a guide on this as well as on other subjects before this Convention. These precedents might, he thought, be very properly resorted to, and ought always to be treated with the highest respect. The one particularly referred to by an honourable gentleman, he considered, however, as wholly irrelevant. The governor of Connecticut was elected annually. But will gentlemen, he asked, draw a comparison between the magnitude of the great and flourishing state of New-York, and the state of Connecticut? It is acknowledged, that to elect a governor annually, in such a state as that, may be very well, and that even a different form of government would answer for so small a community. That state is not

so large in point of territory as some of our western counties have recently been; and, besides, the state of society, as to habits and good morals, in that state, is such, that they would live very safely for a considerable time with very few written laws, and under any form of government. He would prefer to take the precedent to be found in the constitution of the great state of Pennsylvania, as better adapted to our present purpose in every respect. In that state the election of the executive is once in three years.

But when he spoke of the magnitude of the state of New-York, he did not intend to refer so much to her population and territory—it was her institutions; her great plans and projects of internal improvement, that rendered the structure of the government of so much importance. The greatest talents that we could expect any governor to possess, would not enable him in one year to propose and carry into execution, any plan of great public benefit. His views, however excellent and useful to the state, would be frustrated and rendered of no effect, by a change at the end of a short term. He would not begin any thing of moment; and, if he did, he might not remain in office long enough to mature and bring it to a close. In this way, you will have no improvements going on, worthy of our resources, and you would run the risk of a vascillating, weak, and unstable government. In all the governments of this country, the principle of having a balance of power, seems to be fundamental. This is nothing more than giving the different departments such shape and energy as that they may check and preserve one another. Perhaps the senate may be such as to secure the necessary checks and balances. But at present we know not what it will be. He declared that his principal object now was, to create a pause in the discussion of this important subject, until the plan of the legislative department should come before the Convention.

But, Mr. W. said, he could not but notice at this time, the great alarm which some gentlemen seemed to feel, lest triennial elections should, if continued, prove dangerous to the public tranquillity. This, he said, was a new idea. No such alarm had ever been expressed by the people; and indeed he did not believe that any real ground of apprehension existed. If the executive was clothed with any thing like adequate powers, the importance of the office in this state would always excite considerable effervescence, even at annual elections. This evil, he feared, was never to be avoided. He hoped gentlemen would not suffer themselves to be wrought upon by feeling, which, he feared, from what he saw would be the case with some. The subject ought to be discussed with calmness. He concluded by seriously requesting gentlemen to consider, whether it would not be advisable to postpone this subject for the present; and to effect this object he made a motion for the committee to rise and report.

Mr. I. Sutherland. Accountability is the essence of government: no one questions such a self-evident proposition. The question is, how far you may trust, and for how long. The uniform practice of this country has been, to renew the popular branch, at least annually. The higher branch exists for different terms in different states. The governor, in the same way, in the various states, is elected for various terms, one, two, three, and four years. It is conceded that these various departments must exist, and that each must have its separate mode of existence and self defence.—Now in relation to the executive of this state, who has high powers and duties, we must take into account, in settling his term of power, the privileges and power of the other departments. In this government, the legislative department is the strong, and therefore the encroaching department. They are numerous and powerful, and may and can usurp the privileges of other departments. We are in no danger of being encroached upon. This we shall find illustrated in the constitutions of the various states. At first, in the old states, from the recollection of colonial vassalage, the constitutions limited the term of governors to a short time. The apprehensions, however, entertained, of encroachments from this branch, have been found unreal, and consequently in the new states, and more recent constitutions, the term of the governors has been lengthened. In this state, you have just invested the governor with the veto. Would an *annual* governor, let me ask, dare under any circumstances, to interpose this veto, against the express will of a powerful and exasperated legislature? Would he venture to put him-

self in opposition to a vast and influential body of men, when he knew that in a few months he must return to the people? A governor, for one year, would be of so little dignity and consequence, that no liberal minded man would put himself in the predicament of filling so unimportant a station. But independently of reasons connected with the legislature, a long term of office is necessary on other grounds, for the benefit of the people. The people are undoubtedly honest. They are not always well informed, and are subject to be misled. The measures therefore which a governor, if in certain possession of his office for a term of years, might be disposed to digest and propose for the benefit of the state, but which might at first be unpopular, and deemed oppressive, would never be suggested by a governor who felt that at the expiration of the year, he would return to the people—who might be exasperated against him by designing men, however clearly beneficial his projects. The people of this state have no jealousy of the governor's powers. They are too logical to infer, that, because the executive power has been abused, the power of the executive should be altogether destroyed. Even when you add the nomination to office, to the power already conferred on the governor, which let me ask you, would most properly discharge this duty, a governor for three, or a governor for one year? Surely he would, who would have no immediate personal interest in the short approval of a new election, to create to himself partizans and friends by his appointment.—The man indeed, who should make his appointments with such views, would not long maintain his ascendancy over the people—because though temporarily misled, they always return to the paths of honesty. But they may be stirred up to sudden frenzy, and it is to guard the executive against its effects that the governor should hold his office for a longer term. From these considerations, I prefer the present term of three years; but at any rate, am opposed to only one. Mr. Sutherland having concluded, the committee of the whole rose and reported progress.

Mr. Dodge offered the following amendment to the bill of rights, as reported by the committee to whom that subject was referred, which was read and committed to the committee of the whole when on that report.

" The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

The Convention then adjourned.

THURSDAY, SEPTEMBER 13, 1821.

Prayer by the Rev. Dr. Chester. The President took the chair, at 10 o'clock, and the minutes of yesterday read and approved.

Mr. King, from the committee to whom was referred so much of the constitution as relates to the *legislative departments*, to take into consideration the expediency of making any, and if any, what alterations therein, submitted the following report:

1st. That the period for which the senators and members of assembly shall be elected, and the number of the senators, and the number to which members of assembly may be increased, shall continue as already provided.

2d. That the state shall be divided into seventeen districts, to be denominated senate districts; and that the thirty-two senators be elected in the said districts in the proportions following, to wit:

The first district to consist of the counties of Suffolk, Queens, Kings, and Westchester, and to elect two senators.

The second district to consist of the city and county of New-York, and the county of Richmond, and to elect three senators.

The third district to consist of the counties of Rockland, Orange, Ulster, and Sullivan, and to elect two senators.

The fourth district to consist of the counties of Putnam, Dutchess, and Columbia, and to elect two senators.

The fifth district to consist of the counties of Greene, Delaware, and Otsego, and to elect two senators.

The sixth district to consist of the counties of Albany, Schoharie, and Schenectady, and to elect two senators.

The seventh district to consist of the counties of Saratoga, Montgomery, Hamilton, and Warren, and to elect two senators.

The eight district to consist of the counties of Rensselaer, and Washington, and to elect two senators.

The ninth district to consist of the counties of Essex, Clinton, Franklin, and St. Lawrence, and to elect one senator.

The tenth district to consist of the counties of Lewis and Jefferson, and to elect one senator.

The eleventh district to consist of the counties of Herkimer and Oneida, and to elect two senators.

The twelfth district to consist of the counties of Madison, Onondaga, and Oswego, and to elect two senators.

The thirteenth district to consist of the counties of Chenango, Cortland, Broome, and Tioga, and to elect two senators.

The fourteenth district to consist of the counties of Cayuga, Senaca, and Tompkins, and to elect two senators.

The fifteenth district to consist of the counties of Ontario, Steuben, and Allegany, and to elect two senators.

The sixteenth district to consist of the counties of Monroe, Livingston, and Genesee, and to elect two senators.

The seventeenth district to consist of the counties of Niagara, Erie, Cattaraugus, and Chautauque, and to elect one senator.

And that as soon as the senate shall meet after the first election, to be held in pursuance of this provision, they shall cause the senate to be divided by lot into four classes, eight in each class, and numbered one, two, three, and four; and that the seats of the members of the first class, shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year, and so on continually, to the end that the fourth part of the senate shall be annually chosen.

3d. That a census of the inhabitants of this state shall be taken under the direction of the legislature, in the year one thousand eight hundred and twenty-five; and at the expiration of every ten years thereafter; and that a just apportionment of the senators among the senate districts, and of the members of the assembly among the several counties, may be made by the legislature at the first session after the return of every such census, which apportionment shall remain unaltered until the return of another census. Provided, that the number of the senate districts shall not hereafter be diminished, but may be increased, and shall consist of an equal number of inhabitants as nearly as may be; and if a district shall consist of more than one county, the counties shall be contiguous to each other; and no county shall be divided in the formation of a senate district.

4th. Any bill may originate in either house of the legislature, and bills passed by one house may be amended by the other.

5th. The members of the legislature shall receive a compensation for their services, to be ascertained by law, and paid out of the public treasury; but no alteration of the compensation shall take effect during the year in which it shall have been made.

6th. No member of the legislature shall receive any civil appointment under the government of this state during the term for which he shall have been elected.

7th. No person being a member of congress, or holding any civil or military office under the government of the United States, shall be eligible to a seat in the legislature; and if any person shall, while a member of the legislature, be elected to congress, or appointed to such office, his acceptance thereof shall vacate his seat.

8th. No persons holding any civil or military office, by appointment under the government of this state, (judges of the court of common pleas in the several counties, and officers of the militia excepted) shall be eligible to a seat in the legislature.

9th. That so much of the 15th article of the constitution as directs the manner of holding a conferrence, whenever the senate and assembly disagree, be abolished.

10th. That the power of impeachment be vested in a majority of the members of assembly; and that all officers holding their offices during good behaviour, may be removed by joint resolution of the two houses of the legislature; provided, that two thirds of all the members elected te each house concur therein.

11th. That the assent of two-thirds of the members present in each branch of the legislature shall be requisite to every bill creating any body politic or corporate for any purpose whatsoever.

12th. That the fund denominated the common school fund, shall be and remain a perpetual fund, the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this state; and that the rates of toll, not less than those agreed to by the canal commissioners, and set forth in their report to the legislature of the twelfth of March, one thousand eight hundred and twenty-one, shall be imposed on, and collected from all parts of the navigable communications between the great western and northern lakes and the Atlantic ocean, which now are, or hereafter shall be made and completed.—And the said tolls, together with the duties on the manufacture of all salt within the then western district of this state, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; and the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars, otherwise appropriated in and by the said act, and the proceeds of all lotteries which shall be drawn in this state (after the sums granted upon them prior to the sixteenth April, one thousand eight hundred and seventeen, shall have been paid) shall be and remain inviolably appropriated and applied to the payment of the interest and reimbursement of the capital of the money already borrowed, or which hereafter shall be borrowed, to make and complete the navigable communications aforesaid—And that neitheir the rate of tolls on the said navigable communications, nor the duties on the manufacture of salt as aforesaid, shall be reduced or diverted at any time before the full and complete payment of the principal and interest of the money borrowed, or to be borrowed as aforesaid.

SCHEDULE

Of the Inhabitants of the State of New-York, as ascertained by the Fourth Census of the United States, taken in the year 1820.

COUNTIES.	Whole population.	Foreigners not naturalized	Slaves.	Free Whites.	Free Blacks.	Indented Servants,&c.
Albany,	38,116	321	413	36,845	858	
Allegany,	9,330	30	17	9,301	12	
Broome,	14,343	51	25	14,255	63	
Cayuga,	38,897	211	48	38,658	191	
Chenango,	31,215	12	7	31,019	189	
Clinton,	12,070	961	2	11,972	96	
Columbia,	38,330	133	761	36,516	1,053	
Cortland,	16,507	21	3	16,456	48	
Cattaraugus,	4,090		2	4,084	4	
Chautauque,	12,568		3	12,555	10	
Delaware,	26,587	558	56	26,449	82	
Dutchess,	46,615	248	772	44,158	1,685	
Essex,	12,811	189	3	12,780	28	
Greene,	22,996	81	134	22,225	637	
Franklin,	4,439	195		4,439		
*Genesee,	58,093	147	35	57,948	82	28
Hamilton,	1,251	6	2	1,249		
Herkimer,	31,017	253	72	30,685	188	72
Jefferson,	32,952	787	5	32,812	135	
Kings,	11,187	308	879	9,426	882	
Lewis,	9,227	124		9,184	43	
Madison,	32,208	67	10	32,016	182	
Montgomery,	37,569	93	349	36,641	571	8
Niagara & Erie,	22,990	65	15	22,908	67	
New-York,	123,706	5,390	518	112,820	10,368	
Oneida,	50,997	945	9	50,620	368	
Orange,	41,213	175	1,125	39,119	969	
Onondaga,	41,467	99	59	41,213	195	
*Ontario,	88,267	214		87,540	727	
Otsego,	44,856	321	16	44,605	235	
Oswego,	12,374	131		12,342	32	
Putnam,	11,268	39	49	11,053	166	
Queens,	21,519	52	559	18,312	2,648	
Rensselaer,	40,153	165	433	39,049	632	39
Richmond,	6,135	5	532	5,525	78	
Rockland,	8,837	55	124	8,301	412	
Saratoga,	36,052	258	123	35,425	504	
Schenectady,	13,081	194	102	12,320	454	205
Schoharie,	23,154	58	302	22,581	264	7
Seneca,	23,619	37	84	23,355	180	
St. Lawrence,	16,037	990	8	16,015	14	
Steuben,	21,989	155	46	21,813	130	
Suffolk,	24,272	12	323	22,441	1,166	342
Sullivan,	8,900	239	69	8,798	33	
Tioga,	16,971	59	104	16,835	32	
Tompkins,	20,681	20	6	20,609	66	
Ulster,	30,934	105	1,523	28,814	597	
Washington,	38,831	233	150	38,427	254	
Warren,	9,453	19	7	9,346	10	
Westchester,	32,638	270	205	30,795	1,638	
Total.	1,372,812	15,101	10,089	1,332,744	29,278	701

* Since the above Census was taken, the then counties of Ontario and Genesee have been divided, and formed into the counties of Ontario, Genesee, Livingston, and Monroe. The exact population of each of the new counties has not been ascertained, but is believed to be nearly as follows: Ontario, 61,100; Genesee, 40,100; Livingston, 18,400, and Monroe, 26,760.

On motion of Mr. King, the report was committed to a committee of the whole, and ordered to be printed.

Mr. Sharpe moved that the convention resolve itself into a committee of the whole on the report of the committee on the bill of rights. He made this motion with a view of giving the members of the Convention time to hear the reports which are to be made by the other committees, before they decided on the unfinished business of yesterday—(the term of service of the governor.) If driven to vote upon this question now, he should be compelled to vote against his judgment, and in favour of filling the blank with one year. He understood that the committee on the appointing power were about to report in favour of giving the governor an appointing power, which he should be unwilling to entrust to him if elected for more than one year. When the reports of the other committees have been made, he might change his views.

Gen. Root was opposed to this course. He wished to go on with the unfinished business of yesterday. It is said we must not determine the term for which the governor shall be elected, until we determine the power to be delegated to him. I think otherwise. The term of office should be fixed first, and the power to be delegated, be determined afterwards. After some discussion about a point of order, the question was about to be put—when

Mr. Van Buren stated, that as allusion had been made to the probable report of the committee on the appointing power, he would say, that that committee would probably report to-morrow.

The motion of Mr. Sharpe was lost.

THE EXECUTIVE DEPARTMENT.

The Convention, on motion of Gen. Root, then resolved itself into a committee of the whole on the unfinished business of yesterday, (the report of the executive committee,)—Mr. Radcliff in the chair.

Mr. Briggs of Schoharie said, it was alleged against us by our sister states, that we have in this state much commotion and electioneering. We generally admit these charges to be true, sir. The great object of this Convention was to contrive some scheme by which this commotion in our election might be done away, sir. Mr. Briggs begged leave to offer his scheme. He would have twelve senatorial districts—the senators to be elected annually. At the same time he would have the governor and lieutenant-governor chosen. The people would in this manner become familiar with elections. His plans had been suggested by some remarks, which fell from the Chief Justice the other day. That gentleman had said, that when he had ascertained that he was elected a member of this body, he reflected within himself what was his duty. Mr. B. believed that other gentlemen had entertained the same notions. He put an example—suppose, sir, the chief justice was about to hold a circuit in Schoharie—he should happen in company with a gentleman from that county---the conversation turned on the circuit—Well, says the man, we are about to have an important court held in our county—the duty is arduous, our jails are full of prisoners—the docket is filled. Now, sir, in this case, would not the chief justice suppose he was competent to discharge the high responsibilities of his station, and what would he say to such a lecture, sir? Would he not despise the person, who should offer such suggestions. But if a friend on his election here, had given him such advice, would he not have thanked him for it? Would he not on entering on this untried scene, when that faculty of the mind called the imagination, would represent great difficulties---would he not be pleased with such a caution and advice. In ordinary matters, sir, we go with confidence, but in new and untrodden fields, the imagination operating upon the understanding is apt to alarm us, sir, and we see difficulties that do not exist, sir. Hence I infer, sir, that the great question to himself was the result of experience: but in truth there is no difficulty in passing on our business—it is a matter of common sense. So it is with the people; they do not need any great advice---the imagination is to be thus worked up about elections—some great dark project is afoot—the great circle for the election of a governor has come round—the other side are hard at work, and we must beware, that they do not out-general us—handbills are afloat—demagogues are busy—but make

the election annual, and all these squabbles and scuffles would have an end—there would not be thousands of dollars spent to secure a mere annual election---they would not attempt to excite the public mind. Sir, who ought we to elect for governor and officers? ambitious politicians? No: the modest man,---who keeps retired---who says to himself, if my country wants my services, let them come and ask me for them. He would disdain this bribery and corruption---he would only serve when his country wanted his services, sir.

Gen. Root, before the question was taken, would ask permission of the committee to call its attention to some of the arguments offered yesterday, by the gentleman from Schoharie, (Mr. Sutherland,) in favour of filling the blank with three years. The gentleman from Oneida, (Mr. N. Williams,) may charge me with some neglect, if I do not notice his argument on the same side, that it was necessary for the digesting and maturing of profound plans of policy. If the term were annual, this profound wisdom will float on the surface, but in a triennial term, they would go to the bottom. [Mr. W. explained. He did not say that triennial terms would make a man wise; but if wise, it would enable him to exercise his wisdom for the public good.] Mr. Root continued. It is not material: we do not differ much, but the gentleman may not like the dress in which I presented his idea, as well as his own. As to the wisdom of the governor, the presumption of law is, however the fact be, that he is wise after his election. He must also be a discreet man, according to our present constitution. The report of the committee, I believe, does not require *discretion* in a governor. But suppose the governor's great plan is not wisely conceived—must he nevertheless have his three years to perfect it? No, sir, let the people judge of the wisdom of these plans. If they are good, the people will re-elect and allow him to mature them. But the novelty of the arguments advanced by the gentleman from Schoharie deserves attention. They deserve attention as coming from the representative of the people of Schoharie; that county of solid farmers; and as being so little in unison, as I believe, with the sentiments of that people. One of the gentleman's arguments was, that the people have not complained of the triennial term of the governor. But I think they have complained. I have, indeed, seen no resolutions about it from Tammany-Hall, nor in the newspapers; nor has the gentleman probably, in his palace among the pines and hemlocks of Schoharie, heard any complaint. But among the yeomanry of the county which I have the honour to represent, it has long been a matter of complaint, that a man opposed to the wishes of the people should lord it over them for three years. Another argument was, that no governor for a year would ever interpose his veto—he would not dare to oppose the popular will, and so the gentleman would set him above the popular frowns. Sir, I would not. If he should exercise his veto properly, the people will sustain him, and if not, I would not give him an exemption from the consequence of his error. Another argument was, that an annual governor, having the appointing power, would make appointments for the purpose of securing a re-election. And is this possible? Can a public man present himself to the people for their votes, and say the appointments I made were for the purpose of securing my election? Are the minds of men influenced by such motives? Do the virtuous yeomanry of Schoharie yield to such feelings? I think not. They would reject with indignation a compliment like this. But the right of universal suffrage, it seems, is to cure all this evil—so that when you allow the free negroes of New-York, taken from the bushes and kitchens, to vote for a governor, you will have a better governor than when he was the representative of freeholders. But another argument is, that in one year you cannot find your governor out—in three years you will ascertain his virtues—and that in three years, the man will be so tested, that unless he have conducted well, he will not be re-elected. I am sorry the gentleman from Schoharie did not find this out before the last election. We then had triennial elections, and the people re-elected the same candidate. But the gentleman, (Mr. Sutherland,) if he had then found that this result was proper, might have had his feelings spared the high rank which was assigned him in the organized and disciplined corps. But, sir, to leave the gentleman from Schoharie—when you elect your chief magistrate for one term, and your assembly for another, you have then two de-

partments in opposition. We have seen it in 1800, in 1813, '14 and '16, and from the communications which passed between the executive and the legislature last year, a stranger might suppose some hostility existed between them; and without a spirit of prophecy, a similar spirit of hostility may be predicted at the next session of the legislature. This sort of hostility is not desirable—it is not the sort of check contemplated by our government. If the governor be elected for two years, you should elect your assembly for two years also, and they will go on harmoniously together. But who, in this Convention, will propose to have a house of assembly chosen for two years?

Again. You have given the governor a veto upon the acts of the legislature. It may happen, that he and the legislature will differ in its exercise, and this difference must be referred to the umpirage of the people. This is a strong reason why the official term of the governor should be but one year; that both governor and the members of the legislature may be subjected at the same time to the ordeal of public opinion.

Mr. Van Buren, before the question was taken, wished to explain the reasons of the vote he should give. There are three distinct propositions before this convention—one, for filling the blanks with one year—another, with two—and a third, with three. He should consider each. One of the great objects of this Convention, to which the people looked with so much solicitude, is the hope that by the amendments which shall be adopted, party violence, in our politics, will in a great measure be done away. It is not to be denied, that very many of our own citizens, and those of other states, entertain an opinion, that the source of our discord is in the great favour and patronage of the governor; and they think this discord can only be allayed by making the governor a mere nominal head—a creature of the legislature. Though he did not assent in its extent to the propriety of this radical change, it would be unwise to neglect what public sentiment has so distinctly pointed at. Yet we must not disguise to ourselves the fact, that we have already augmented rather than diminished the power of the executive. We have given him the exclusive veto by an immense majority, and by the voices of the judiciary themselves, who formerly partook of this power. We have also invested him with the power of pardoning, and under these circumstances, he would have preferred waiting till we know what other power will be given to the governor, before we decided on this term. The majority of this committee had decided otherwise; and the vote he should give on this question, would therefore be given under the expectation, that we shall increase still more the power of the executive, by a vast increase to his appointing power. The branch in which this power formerly resided has been unequivocally condemned by the public opinion; and there is no other hand, in which it could be safely trusted, except the executive. With this feeling, then, he could not but think, that as we increase the power of the executive, we should also increase the responsibility of the governor. We should bring him more frequently before the people. His conflicts, if any, will not be with the legislature. He was rendered by the provision now proposed, utterly and entirely independent of the legislature. Of the people he did not think he should be rendered so independent. In the exercise of the veto, which will only take place on important occasions, he will be supported, if he should have acted manifestly for the public good. He had not experienced the evils of triennial elections; but as we had vastly increased the power of the governor, a strong desire is manifested to abridge his term, and in this sentiment he concurred. But how abridge it? We wish the people to have an opportunity of testing their governor's conduct, not by the feelings of temporary excitement, but by that sober second thought, which is never wrong. Can that be effected if you abridge the term to one year? No, sir: it is necessary that his power exist long enough to survive that temporary excitement, which a measure of public importance must occasion, and to enable the people to detect the fallacy with which the acts of the government may be veiled as to their real motives. Can a fair judgment of motives, or of the effect of measures, be made in a few months? No, sir—even a term longer than three years, must sometimes be necessary to enable us to judge of the effect of measures. But we must not go into extremes, or we shall arouse the jealousies of the people, in weakening the

responsibility to them, of their public officers. Let us test the question by reason. You have a state and population, whose concerns bear a strong analogy to the interests of the Union. Can a governor, in a term of one year, make himself acquainted with the interests, the wants, and condition of this great state? There was one remark he made with great deference—in all the eastern states, the tenure of the chief magistrate is for only one year; and the majority of this Convention have imbibed their notions under those constitutions, and naturally consider them wise. Others, who have lived under the constitution of this state, have preferred, as he had been accustomed to do, the tenure of three years; and he asked, if there was not some respect, some comity due, to those who have viewed this, among other provisions of our constitution, with reverence. For these reasons he hoped the blank would be filled with two years.

The question was then taken by ayes and noes, on filling the blank with three years, and decided in the negative, 89 to 30, as follows:—

AYES.—Messrs. Buel, Edwards, Fairlie, Hunter, Jansen, Jay, Jones, Kent, King, Lawrence, Munro, Nelson, Paulding, Platt, Rhinelander, Rose, Russell, I. Smith, R. Smith, Spencer, I. Sutherland, Ten Eyck, Van Horne, Van Ness, S. Van Rensselaer, Van Vechten, Wheaton, E. Williams, N. Williams, Yates.—30.

NOES.—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Bowman, Breese, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Fenton, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunting, Huntington, Hurd, Knowles, Lansing, Lefferts, A. Livingston, P. R. Livingston, M'Call, Moore, Park, Pike, Porter, President, Price, Pumpelly, Reeve, Richards, Rockwell, Rogers, Root, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seamen, Seely, Sharpe, Sheldon, Starkweather, Steele, D. Southerland, Swift, Tallmadge, Taylor, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Verbryck, Ward, A. Webster, E. Webster, Wendover, Wheeler, Woods, Woodward, Wooster.—89.

Mr. Hogeboom. The question now is as to filling the blank with two years. I have listened attentively to the reasons offered for continuing the governor in office for three years, but I have heard none that satisfied me of its propriety. The reasons offered by gentlemen for three years, and for two years, are precisely those which would induce me to vote for one year. The state of Connecticut, we are told, is small, and can, for that reason, elect annually. It is not so in New-York. Connecticut, it is said, is like one family. They see all things in the same way, and are easily governed. Now, sir, if this family be so easily governed, why bring the governor so frequently to account. The people of New-York are not so easily governed; but the people are sovereign: and it is made a question that we shall transfer this sovereignty. Since the alteration of the time of holding the election, from spring to fall, there is time enough afforded to the people, to inquire into the acts of their public servants. The legislature generally adjourns in April; and there will then be six months for the people to consider and pass upon their acts. The inhabitants of New-York, I acknowledge, are not so moral as those of Connecticut, and the eastern states generally. Why are we not so moral? One reason, I think, is, that the people of New-York trust too much to their public servants. We are very immoral and deserving of punishment, but not at the hands of our servants. We have had punishment. We have had years of plenty,—a land overflowing with milk and honey; but while the blessings of that Beneficent Being, who rules the universe, were pouring upon us, our servants have been ungrateful. We have acted like the prodigal. We have wasted the paternal patrimony. We have it in confession now from the president of this body, whose heart knows no wrong, that the constituted authorities have been in the habit of doing evil. We have been increasing the power of the executive; and when we give great power, we should create corresponding accountability. The elections to the assembly are annual; and owing to the change in the time of holding that

election, we have a fair opportunity of testing the conduct of the members. So let it be with the governor. I believe more electioneering violence is carried on here, with our triennial election, than in all the ten states which elect their governors annually. I therefore think that the governor should be elected annually. His principal public acts are done during the session of the legislature, and the people will have abundant time to judge him, as they do the members of assembly. Another reason is, the governor is to have a veto on the acts of the legislature,—a check we call it. This check on the people, if the governor is to be elected for two years, will be rather found a *choak* on the people, who are told they must not speak of their governor for two years. We may think all the wisdom of the state is concentrated here; but I, for my part, don't think there is a tenth part of it here. We must, therefore, act carefully. I shall vote for one year.

Mr. Sharpe renewed his motion to rise and report. I am disposed to vote for two years,—or was, till what dropped from the chairman of the committee on the appointing power, which leads to a belief that the governor is to be vested with a great portion of that power. In this case, let the gentlemen who are in favour of electing him annually, reserve their votes until knowledge is obtained which will enable them to vote correctly. The people have called for the destruction of the council of appointment; and they expect the appointing power to be returned to the counties.

Mr. Briggs. I am for an annual election of governor, sir, and that he should have all the nominations of the great officers, sir. I am willing to trust him, sir. I am ready to vote, sir. We are prepared for the question, sir. Let us not rise and report, sir, but decide the question now, sir.

The motion to rise and report was lost.

Mr. P. R. Livingston. The committee will remember the views which I expressed when I introduced my amendment to the report of the select committee relative to the qualified negative, and will then readily infer the vote which I shall now give. I am rejoiced that the debate has been brought to a narrow compass by the vote just taken upon filling the blank with three years. The question is now between one and two years; and if the arguments I shall now use, shall make the impression upon others, that they have upon me, the vote will be for one year. In the course of my argument, I shall review the judicial decisions for many years, with mingled emotions of pleasure and pain. I shall have occasion to notice what can only pass without censure, when it passes without observation. The original framers of the constitution, in the time of peril in which it was made, limited the period to three years. I have heard nothing but imaginary fears of popular violence alledged in justification of a term of two years. But will any gentleman point out any such violence? And is there any one in it of a mind so limited, as not to recur to many acts of violence on the part of the executive. Review your government, and for forty years you will find, that only five citizens have been employed as governors—a proof that when the citizens are satisfied, the governor is safe. Let us revert to the government of the United States. When that great patriot, Washington, left his earthly habitation, he bequeathed a legacy, which should be read as frequently, as that good book which we all often read. He cautions you against a perpetuity of power—Mr. Jefferson and Mr. Madison followed the example. Why, then, in this great state, make long terms? It is not to the effect on the state alone, but on the United States, that you are to look. On the union is the republic planted, and by its separation can ambitious men only hope to trample on republican principle and liberty. What are these checks and balances. You cannot preserve the governor against the people—they are supreme. The only check is the virtue and morality of the people. A corrupt people will not choose virtuous governors, nor a moral people vicious ones. Much had been said of frequency of elections, as tending by their excitements to produce discord and ruin. If these premises were true, we should extend the term. But frequency of elections I want to see—it is attended with no additional expense. The people assemble annually to choose representatives and senators, and the same trouble would elect a governor.

It is the duty of every man to give his vote, and if I could effect it, I would

make it felony, without benefit of clergy, to refuse to do so. In the ballot boxes is our only safety. But we are told on the one hand, that the governor will do nothing—on the other, too much. He came to the government, certainly not to hoard money, but from love of country and love of fame. Will he not, then, bend his mind to the duties of his station at once? You have now a governor, who holds our state against the public interest and public feeling—you have in this case a warning; and is it not a subject of regret, that he cannot be removed by an annual election. The people may by tricks be defrauded of their votes; but the trick being discovered, the man employing it ruins himself forever. At a great election recently pending, that for the presidency, your own chief magistrate denounced the general government in terms, that, if true, would render them unfit to be trusted again—and if that denunciation had been true, those it aimed at were unworthy of any confidence. Have you not had subordinate instances in your own state? The comptroller was ordered to settle an account with a public officer. He refused to execute it; and did the executive compel the performance of it? No—but the people sent you a council of appointment to punish the unfaithful officer. And yet gentlemen want a chief magistrate for two years, in the face of these recent facts. I want no projecting governor, who will probably be a very bad officer, and his plans might be good or bad. The people are honest and grateful, and reward their faithful servants.

There is another great principle of republicanism—rotation in office, which is what we require. Moreover, principles, not men, are our standards. It is in politics as in religion, the creed, and not the officiating minister, is the guide of our conduct; and though the individual be here to-day and there to-morrow, the creed remains the same. I cannot enter into the apprehension of some of my friends—Massachusetts is little less populous than New-York, and yet she elects annually. Are we wiser than our brethren of the east? Are not their institutions as wise, their laws as good, as ours? Yet their elections of governor are annual. The states which have adopted annual governments were formed during the war—were the sinews of the contest. The majority of this Convention are the friends of democratic government, and they expect from us such amendments to the constitution, as are in conformity to democratic principles. It has been said that the people have not asked for an alteration of the term of service of the governor; but we have made other amendments not called for by the people; and the people have yet to pass on those amendments. Sir, I should have unwillingly been a candidate, but for the consoling reflection that the people have this power. They are wise and honest, and I hope we are all actuated by the same sincere motives.

Mr. I. Sutherland. In the remarks I have made I have only exercised a duty which I deemed proper. I have no interest independent of that which we must all feel in the question under discussion; and in stating, as I did plainly and openly, my views to the committee, I thought I should have shielded my motives from censure, and my arguments from reprehension. I think, notwithstanding the attempts to produce a contrary effect, that I succeeded. I certainly did not say that the governor should be placed beyond the control of the deliberate voice of the people. No one can say that in a republican government, there is any power above or equal to the voice of the people. But it was to guard the governor against the effects of temporary delusion, that I was in favour of a long term for the governor. The observations of the gentleman from Otsego, (Mr. Van Buren) show, that more than one year is necessary to the executive. This state is destined to become a great manufacturing state; and plans of vast importance may be required to be digested by the governor. But, sir, beyond the line of New-England, there is not a state in the union that elects its governor annually by the people. In those states beyond that line, where the governors are elected annually, they are chosen by the legislatures; and hence an inference may be fairly drawn, that the expressed will of the great majority of the people of the union is, that an officer of so much importance shall not become a source of annual popular excitement. Much has been said of the variety of character among the people composing the population of the various states. There is much justice in these remarks. There certainly is

great difference, and a different organization of government is required here, from what is necessary in New-England. As to the appointing power, as I understand it is proposed to amend it, I agree with the gentleman from New-York, (Mr. Sharpe) that I never will consent to invest it in the governor. The evil of our present condition has arisen from the abuse of this power, and the people have unequivocally condemned it.—And when I voted for the term of three years, I did it with a mental reservation that the executive should have no control over the appointing power.

The observations of the gentleman from Delaware I did not fully hear. But I understand he charged me with entertaining a contempt for the people. I have indeed felt a contempt for those who affect to be the exclusive friends of the people, by pretending always to advocate their rights. But, sir, friendship for the people, like that for an individual, is most likely to be known, when it is least loud in professions. I must say, however, that if in the exercise of any duty here, I have been so unfortunate as to differ from the views of my constituents, I must make their wishes subservient to my own conscience. In the present case, however, I have no apprehension of such a result.

Gen. Root. The gentleman has said that he has been misrepresented. I call on him, through you, sir, to say how, and by whom. I stated in my argument, that I spoke from recollection—not having taken any minutes of the speech of the gentleman from Schoharie, (Mr. Sutherland) and would be glad to be corrected, if I should make any more. Sir, I have made no misrepresentations, and I treat the imputation of having done so with disdain.

Mr. Van Buren. Before the committee rise, I wish to make some explanation in relation to a subject evidently a very delicate one—that of the appointing power. A misapprehension exists as to the intentions of the committee upon that subject. There is no disposition to constitute the governor the sole appointing power. There are fourteen thousand offices in this state, of which it is proper to distribute as many as possible among the counties. But it must occur to every sensible man, that there are some offices, such as the higher judicial ones, which must be subject to appointment. Upon the whole, I do not doubt, that the report when made, will meet with the approbation of the committee.

Mr. Buel. I do not rise, Mr. Chairman, in the expectation of enlightening the committee on the question now before them. But as I feel bound to vote differently on this subject from my venerable colleague (Mr. Hogeboom); and as the question is of great importance, I feel constrained to assign some of the reasons which will influence my vote.

I fully subscribe to the sentiments which several gentlemen have advanced, respecting the limits which we ought to prescribe for ourselves in amending the constitution. We ought to propose such alterations in the constitution only, as public opinion, well ascertained, demands, or experience has shown to be necessary. Before I came to this Convention, I had not understood that an alteration in the term of office of the chief magistrate was called for by public sentiment. I did not therefore suppose, that any alteration in this particular was thought necessary. Accordingly I gave my vote on the last question, taken in favour of continuing the term of office for three years.

The question now under consideration, is, whether the office shall be held for two years, or one.

In order to come to a right conclusion on such a question, we must consider what powers are given to the governor, and what duties are required of him. In examining our constitution, and that of other states, and of the United States, we shall find that the duration of different offices usually bears some proportion to the personal qualifications expected in the officers, and the duties which they are required to perform. What, Mr. Chairman, are the duties which our constitution imposes on the governor, and what are the qualifications which he is supposed to possess to enable him to discharge those duties with fidelity and ability?

In the first place, he is charged with the *execution* of the laws; or, as the constitution expresses it, "he is to take care that the laws are faithfully executed." This important trust cannot be properly discharged, unless he is fa-

miliarly acquainted with the laws of the state. He must be thoroughly versed in the whole body of the public statutes. Such knowledge is not attainable in a few weeks, or a few months, but is the fruit of many years study and employment in the subordinate branches of the government. The same extensive acquaintance with the statutes of the state is requisite, to enable him discreetly and wisely to exercise the qualified veto on acts of the legislature which is now conferred on him. When a bill is passed, altering the permanent laws of the state, the governor cannot judge discreetly upon the propriety of giving or refusing his assent to its passage, unless he has an accurate knowledge of the existing code. One great object of giving this power to the governor, is to preserve the state from the evils of a mutable legislation. It is also made the duty of the governor to inform the legislature of the condition of the state, as far as respects the executive department, and to recommend all such matters for their consideration as shall appear to him to concern its *good government*, *welfare*, and *prosperity*. This high and important part of his duty cannot be discharged, unless he possesses an extensive knowledge of the fiscal concerns and prosperity of the state; its resources, its geographical and statistical situation, and the progressive state of its internal improvements. As commander in chief of the militia and army of the state, the governor ought to be thoroughly acquainted with the situation of the militia, its discipline and organization, and also with the state of its fortifications, arsenals, and munitions of war. It is made the duty of the governor, on behalf of the state, to correspond with the general government, and with the governments of the several states. In discharging this duty, a knowledge of our relations with the United States, and the several states, is presumed. With the United States we often stand in the relation of debtor or creditor; a knowledge, therefore, of our situation in that and many other respects, arising from our intimate connexion with that government, is essential even in time of peace; and in time of war, the concerns of the two governments are still more blended, and the connexion more important. With neighbouring states we sometimes have important relations, arising from disputes about territory or jurisdiction; and in one of the modes of altering the constitution of the United States. It often becomes necessary, in order to compare the public sentiment in different states, to enter into correspondence, of which the governor is the proper organ.

These are mentioned as instances only, of the numerous relations which must ever exist between this state and that of the general government, as well as the governments of other states: And they shew the importance of having a governor who is familiar with our political history, and understands our external interests. As the governor is also invested with the important power of granting reprieves and pardons after conviction, it is of great importance that he should exercise this power discreetly. He should be well acquainted with our criminal code, and penitentiary system, and should be able to point out to the legislature the state of the prisons, and the effect of that kind of punishment, and the means of remedying the defects of the system. From this brief consideration of the duties which the constitution and laws require a governor to perform, it must be obvious, that the constitution supposes the chief magistrate to be a man of mature age and understanding, and of much practical political experience. In general, he will be a man who has acquired the confidence of the people, by the able and faithful discharge of subordinate offices in the government. Men, from whom so much is required, and who possess such qualifications as the constitution supposes, will never be numerous; they are not to be found in every town, nor in every county. Will men, thus endowed and fitted for the office, be as likely to accept of so high and responsible a trust, if the term of office is cut down to a single year? Men qualified as the constitution requires, will have a high sense of personal character and reputation. The governor of this state is personally responsible to the people for the discharge of his high trust. He cannot, like the rulers of the states and kingdoms of Europe, shelter himself under the advice of his counsellors.

Is it not then to be feared, if you limit the duration of the office to a year, that you will bring it into disrepute? Will not your statesmen of greatest experience, be likely to shun a place which may subject them to hasty animadversions, without giving them time to demonstrate the wisdom of their administration?

One year is barely sufficient to give a man, even of the best talents, that knowledge of the details of the office which will enable him to administer the government with ability. His public acts must all undergo a severe scrutiny, and very often they will be misrepresented by designing men for the very purpose of destroying public confidence. Time would dissipate such misrepresentations, and the people would judge dispassionately. The measures and policy recommended by the governor should be subjected to a fair trial.—The conduct of the members of the assembly can be estimated by their votes during a session. But the acts of the governor relate not merely to the period of the session of the legislature—His duties in executing the laws, in dispensing pardons, and in various other ways, are constant and continued through the year, —other gentlemen have demonstrated the necessity of allowing a governor time to test the measures and the policy which he recommends, before a sentence shall be passed on them by the people. I therefore forbear to enlarge on this subject. But the utility of experience in an office, requiring the performance of so many, and such important duties, must be apparent. Wherefore is it that your own constitution, and that of the United States, affixes a longer term of office in the senate than in the other branch of the legislature? Is it not that your senators may have the benefit of experience; that they may become more familiarly acquainted with the complicated business of the state, and thereby ensure greater wisdom in your legislature? Why do your judges in the highest courts of law and equity hold their offices during good behaviour? Is it not one great reason that experience is of vast importance in the discharge of their high trusts? Surely the duties of a governor of this state require as high attainments and demand as much experience as those of a senator—But as the abuse of power in a governor might be more dangerous than in a senator, I admit the soundness of that policy which affixes the lowest term of office that will probably insure its acceptance by men best qualified for it—and which will enable them to discharge its duties with wisdom and fidelity. But it is said we have already given new and important powers to the governor, and this is used as an argument for limiting the duration of his office to one year. It is true we have abolished the council of revision, and left the governor alone to exercise the power which that council possessed. We have also extended the governor's power of pardoning to the case of murder. But it appears to me that we have increased his responsibility in a much greater degree than his power. In the council of revision he was in a great degree shielded from responsibility. He was not called upon to vote unless the council were equally divided. If the council rejected a bill improperly, little or no individual blame could generally be attached to the governor. If a majority of the highest judicial officers of the state decided that a bill was unconstitutional, he could be silent and incur no censure. He will now be alone responsible, both for rejecting bills improperly, and for approving those which ought to be rejected. In the exercise of the pardoning power, in the case of murder, he is charged with a duty of high responsibility and great delicacy. This surely is a trust of fearful responsibility, and which few governors would desire to possess. It is supposed, also, in the argument, that the governor will be entrusted with the power of nominating to office, and that the senate will have the power of confirming or rejecting.—The committee on the appointing power have not yet reported, and we can only conjecture respecting the disposition of that power by the Convention.

As a member of that committee, however, I beg leave to state, that if I understand the sentiments of the majority, they will not report in favour of giving an extensive patronage to the executive in the bestowment of offices. Their report will recommend the *distribution* of the power of appointment. Some of the highest judicial offices, and some other general offices, they will recommend to be filled by the governor and senate. Most of the county offices they will endeavour to have provision made for in the counties. Will such a limited patronage be an important addition to the powers of the executive? I hold that it will rather diminish, than increase, his power.—He has now a concurrent right of nomination with the members of the council of appointment; and if they are equally divided, he has the casting vote; and this is a case which has often occurred, and the power extends to almost every office in the

state—but by the contemplated disposition of the appointing power, he will have the right to *nominate* only ; and this will probably be confined to a small number of offices ; and, as those appointments will only be on his nomination, he will be solely responsible for improper appointments. Indeed, if the alterations made, or proposed, in the constitution, really increase the powers of the governor, as they increase his responsibility in a much greater degree, and especially as he will be held to the discharge of duties which require great knowledge and experience, on his naked responsibility—it appears to me no argument can be drawn from these alteration in favour of cutting down the term of his office to a year.

It has been urged that the political commotions by which this state has been agitated for years past, have been produced by the importance of the office of governor, and it is supposed, that if the term of the office should be reduced, the contest would be less violent. It is probable that in this case, as in many others, the effect is not referred to the right cause. Some gentlemen think that, as the election of a governor in the New-England states does not usually produce so much excitement, this is to be attributed to the shorter duration of the office in those states. But is it not as probable, that the higher degree of excitement in this state, on such occasions, arises from the different state of society ; from the mixed condition of our population ; from the great extent of our territory ; the diversity of our interests in different sections of the state ; and the higher importance of the office of governor in this great and populous and powerful state.

The gentleman from Dutchess, (Mr. Livingston) contends that the term of the governor's office ought to be reduced to one year, because the present governor has abused the confidence of the people. But if this fact be conceded, it appears to me that the argument is not well founded. If an individual holding any office, demeans himself improperly, it does not follow that the office which he fills for the time being, ought to be abolished, or the duration of it lessened.—A judge may behave improperly, so may any officer in the state. If the misconduct is such as to lay the foundation of an impeachment, that is the remedy. I admit that a governor may so conduct as to render him unworthy of public confidence, and yet not be the subject of impeachment. But he will at no very distant period be judged by the people. The question in this and similar cases, must be, whether the evils of an occasional abuse of power, by a chief magistrate, are greater, and probably will continue to be greater, than would arise from abridging the term of office so much as to degrade it. I should much fear that if the office of governor were reduced to a year's duration, it would often be filled by men of inferior capacity ; by men who would be induced only by cupidity and the desire of distinction, to seek for an office which those who have a high sense of character and responsibility, would shun. Rotation in office is a genuine republican principle, which I heartily approve of, and I hold it to be a correct maxim in our government, that the duration of every office should be as long as is requisite, to insure an able and faithful discharge of its duties, and no longer.

Mr. Edwards. It was my misfortune, on the last motion, to vote with a small minority of this respectable body. I do not regret that vote. When I came here, I came with a resolute determination to preserve every tittle of the sound parts of the constitution. This resolution I shall adhere to. Sir, I was born in a land where the people are tought from their infancy to reverence the institutions of their ancestors, that wisdom is the offspring of experience ; and that nothing is more fallacious, more delusive, than the speculations of man. By these principles I have endeavoured to guide myself through life, and by these principles I will now proceed to test the question before the Convention.

Sir, what are the evils which the present term of the executive has produced ? I can point to none. How was this government administered during the revolutionary war ? Who then, as it were, "rode upon the whirlwind and directed the storm ?" The venerable George Clinton ; and he so administered it, that his name will ever be revered by the people of this state. During the late war, the government was again administered by a chief magistrate who held his office for three years, and who it will not be denied administered it to

general satisfaction. Does not all this experience afford strong evidence of the utility of keeping the executive upon his present establishment? Sir, the views of the gentlemen who have advocated this limitation, seem to be limited to the "piping time of peace." If the expectation that peace is to endure forever, is not delusive, if the millennium has indeed commenced, then I will concede that there is weight in the arguments of those gentlemen. But, sir, while man remains as the history of the world has ever pourtrayed him, as ambitious, cruel, and rapacious—while his breast continues to be stormed by angry passions, wars will come; and every wise man, in establishing the form of government for his country, will so form it as to enable it to withstand the shock.

You must therefore have a governor whose powers and whose term of service will be such as to enable him to meet the emergency. The revolutionary war, as well as the late war, have both shewn, that such is our peculiar local situation, that whenever the United States are involved in a war, we shall be in a peculiar manner exposed to its depredations, and that this state must then put in requisition its own resources for its defence. The experience of the late war upon this subject, which is too recent to be forgotten, has demonstrated, that we have dealt out our power with so sparing a hand to the general government, that its arm is inadequate to the defence of every part of the country. Sir, it is but seven years, this very month, since I was summoned to attend in this hall as one of the representatives of the people, to provide for the defence of the state. The language which was then held out to the legislature was, that they must put in requisition the resources of the state for its defence, and rely upon the general government for remuneration at some future time—that the national treasury was exhausted, and that their forces were too feeble for the defence of the country. At this time we were threatened with invasion upon both the atlantic and lake frontiers, and twenty thousand of our militia were in the field. These were then the sentiments of a decided majority of the legislature, and were in unison with the wishes of the people. The resources of the state were accordingly put in requisition, and the measures adopted were of so decided and so energetic a character, that they were attended with the most happy results. And will it be contended that it is expedient to put the executive of this state upon a one year establishment, when he may again be called upon to encounter scenes like these? What would become of all the plans for a campaign, all the military arrangements, all the organizations, and the infinite multiplicity of concerns, which must then necessarily engage his attention, provided he is cut short in his career by an annual election. Would the patriotic George Clinton have wielded, as effectually as he did, the power of this state, if his office had been kept dependent upon an annual election? Perhaps he might; but certain we are, that the government, during both wars, was administered to the satisfaction of the people—How it might be under the contemplated organization, time alone can shew.

It will not be contended but that it is desirable that the government should be stable in all its departments. In the organization of the legislative and judicial departments, the requisite stability is provided for. Why, I would ask, is this stability requisite only in these departments? Why is it not equally requisite in the executive department? Why is whatever relates to the execution of your laws to be kept in an eternal state of fluctuation?

But, sir, the experience of other states, and especially of Connecticut, is appealed to, to shew that there is no necessity for extending the governor's term beyond one year. With respect to most of the states where this practice prevails, such is their interior situation, that they have nothing to apprehend from war—And as it respects Connecticut, their steady habits preserve them from changes. The memory of man extends but to one change of party in that state, and that is of a recent date. Whoever is there elected governor, remains governor until the day of his death. The same stability characterizes all their proceedings. But recently an old man died there who had been fifty-six times elected a member of the legislature. If I was in Connectiout, I should as soon think of proposing that the Dey of Algiers should be imported to govern them, as to propose that their governor should be chosen for two years. The fact is, they are so firmly knit and bound together, that whether their governor is cho-

sen monthly or yearly, or whether their government assume one form or another, the result will be nearly the same. You have all heard of the steady habits of Connecticut, but who ever heard of the steady habits of the state of New-York? Their steady habits is to keep in perpetual turmoil, and to rush from one extreme to another; and after they have accomplished one point, no son of Adam can tell what they will drive at next. Let us not, therefore, delude ourselves by relying upon the experience of other states, and above all, of Connecticut. The experience of our own state and of our own people, ought alone to govern. We are called upon to form a government for them, and not for a people essentially different from them.

Sir, I came not here to flatter the people. I came here to serve the people, by a faithful devotion of my faculties, such as they are, to a subject which most deeply concerns them and their posterity. To accomplish the end for which we are sent, we must form a correct estimate of the character of this people. We have heard much flattery delt out to them; and who would imagine from what we have heard, but that they were all wise, all honest, all, all honourable men. Sir, this is all folly. It is not true, and the people know that it is not true. The truth of the matter is, that the people of this state are are like the people of other states. Some of them are wise and some are foolish; some honest and some are knaves. If the people are as they have been represented, how does it happen that your courts of justice are crowded with law-suits, and your state-prison so filled to overflowing, that it is necessary from time to time, to disgorge their foul contents upon the community? Sir, the very existence of civil government is a libel upon the human race. It is enough for us to know, that there is in the people of this, as well as of other states, a fund of good sense, of integrity, and of patriotism, which qualifies them in an eminent degree for the enjoyment of a free government. And it is our business so to organize the government, as that it will most effectually answer the end for which it is established, and that is to protect the virtuous and to punish the vicious; to cast a rampart around the deserving, and to restrain those who will not respect the laws of God or man. We must take things as we find them here. And I conjure the people from New-England not to be led away by the example of their native states, but to apply the experience of this state to its institutions. So long as we lean upon the staff of experience, so long we shall be preserved from wandering from the true path. And if we adhere to this, we shall find no reason for changing the government of this state in so fundamental a point as the duration of the office of the chief magistrate.

Sir, the science of government is above all sciences the most complex and difficult to be well understood. No human genius ever yet arrived at a full and complete comprehension of it. It is a subject upon which mankind have groped in darkness from the creation. Let us not, then, venture upon the field of experiment, but leave untouched all those parts of the constitution which have worn well. By a change in a particular which may be deemed unimportant now, we may in the lapse of time introduce evils of a most alarming character. Montesquieu has furnished us with numerous cases where a change in the form of government in a particular, which at the time appeared to be of small importance, in some instances changed the constitution, and in others overthrew the government. Now, although I do believe that nothing could deprive the people of this country of their free governments, yet, by an imprudent alteration, we may introduce evils which will be extremely mischievous. Of this, this state furnishes one memorable instance. The Convention of 1801, in their wisdom, deemed it wise to take the appointing power from responsible, to and place it in irresponsible hands, and the evils produced by it have led us to the calling of this Convention.

In support of the motion now under consideration, much stress has been laid upon the enormous powers which it is contemplated to place in the hands of the governor; and the honourable gentleman from Otsego, (Mr. Van Buren,) has taken it for granted, *that a large portion of the appointing power must be lodged in the executive*. Sir, I sincerely hope and trust that it will not be so. I trust that any proposition for vesting so much power in the executive, will meet with the speedy and certain condemnation of this Convention; as I am sure it will

of a vast majority of the people of this state. The source of the evils of which we complain, and which has induced to the calling of this Convention, is not to be traced to the duration of the office of your chief magistrate, but to the enormous accumulation of the appointing power in irresponsible hands in Albany. This, sir, is the grand fountain of corruption—whose streams have poisoned the political integrity of the state. By the accumulation of this power, not in the hands of the chief magistrate, but of those who, from time to time, have had the address to seize upon the appointing power, you have repeatedly witnessed instances of men, who have grown to a giant's size, and wielded the political power of the state with a giant's strength. The elevation which they have obtained has not been owing to their distinguished merits, but by drawing to their aid the support of every scoundrel in the state, who was willing to sell himself for an office. Those men, sir, are as sagacious as hounds, in seeking out the sources of power, and whom they regularly find to be, not the chief magistrate, but some excrescence upon the body politic—some political fungus; and by ascertaining his wishes, by sounding his views, they are sure of accomplishing their views. And, sir, pray what is the extent of this patronage in the hands of the appointing power? There are now upwards of twelve thousand officers, civil and military, in commission under it. The governor of this state has informed you that the emoluments of these officers amounted to a million of dollars a year. Now, sir, what government can stand before such an influence as this in corrupt hands. This has been the origin of all our evils. It is this evil which induced to the calling of this Convention. And it is the remedy of this evil which the people demand at our hands. And yet it is here alledged, that the greater part of this power is to be transferred to the hands of the executive—that it is still to be centered in Albany. As well might the people be required to send their harvest to Albany and then come with cap in hand and bended knee to buy back bread for their families, as to depute to any man all their powers, and then to beg back a portion of it for themselves.

And why, let me ask, is this power to be here centered? Why are not such of the officers of the government, whose duties are confined to the counties and towns, to be chosen by those who are about to be affected by their administration. Are not the people of the counties and towns fit to be trusted with the power of making those appointments? If not, they are not fit for a republican government. If this be the fact, we may as well at once have done with republicanism, and send to Europe for one of their legitimates to rule over us. But, sir, the county and town governments have ever been the soundest and best parts of our political system. No complaint of their abusing their powers is ever heard. The supervisors of the towns are universally spoken of, as being as respectable a body of men as there is in the state. The assessors and overseers of the poor are also highly respectable. These privileges have been enjoyed by the towns for half a century. How, then, can it be pretended, that they are not competent to the election of suitable men for justices of the peace, and other county officers.

I know, sir, that the language which I hold upon the subject of leaving the term of the executive untouched, and upon the subject of the veto, may be represented as aristocratical, and that weak minds may be made to believe it. But such representations will not impede me in my course. We shall see in the end who is willing to confide power in the people. The arguments in support of the veto are before the people, and they will judge for themselves. This power, together with the power of pardoning, are urged as reasons why the term of the executive should be shortened. And pray, what is the amount of this enviable privilege of imposing a veto upon laws? I have been present, in several instances, when laws have been returned by the council of revision; and I never knew an instance when it did not produce a high degree of irritation in the legislature. This privilege of a veto, in the hands of the executive, is nothing more than the privilege of bringing a hornet's nest about his ears.

Mr. Edwards then proceeded to shew, that the veto, as it now stood, and the pardoning power as he wished to place it, would place the executive upon a footing much less advantageous for the accumulation and abuse of power, than

he was heretofore. He expressed his regret that, by some side wind, the report of the committee, requiring the governor to report to the legislature the reasons for all the pardons which he might grant, had been stricken out; and announced his determination to move that it should be restored. He then proceeded to remark, that wherever he confided power, he would insist upon its being accompanied with a strict and rigid responsibility. That he would abolish all councils which act in secret, and put the governor upon such a footing, that in the discharge of his duty he should be exposed to the full gaze of the people. He said, that he should forbear touching upon those branches of the subject which had been so ably discussed by Messrs. Sutherland and Buel. He then proceeded to consider what would be the future destinies of the state, as it respected the number and character of its population, the variety and importance of its concerns, the increase of pauperism, &c. &c. and what events might ensue, which would require the vigorous interposition of the executive arm. The present he considered as the age which our posterity would recur to as an age of primitive simplicity, so far as relates to our republican institutions. Pauperism (he observed) is rapidly increasing, and will increase, in a proportion vastly exceeding the increase of the population of the country. Men, who are desperately poor, are easily wrought upon. We have never yet known, in this country, what it was to have a civil war. Yet, in the course of time, one portion of the community may be placed in hostile array against the other. He then proceeded to shew, that posterity might, in that event, be inconvenienced by frequent elections, and expressed his hope, even if we should experience some little inconvenience from the present term of the executive, that we would, notwithstanding, suffer it to remain, out of regard to posterity, and reverence for the institutions of the state. As the time for adjourning had arrived, he said, he would close his remarks with expressing his earnest desire, that they would content themselves with correcting what they found to be pernicious, and would leave the rest untouched. If they went upon the plan of overhauling every branch of the government, without respect to beneficial effects which experience had shewn to attend them, and should go upon a course of experiments, they would soon find themselves, as it were, adrift upon a wide sea, without rudder or compass. If, (said he,) on the other hand, we only correct what is amiss, we cannot go wide astray; and we shall then meet with the approbation of our constituents, and the blessings of posterity.

The question on filling the blank with *two years*, was then taken by ayes and noes, and carried in the affirmative, 61 to 59, as follows;

AYES—Messrs. Bacon, Beckwith, Breese, Brinkerhoff, Buel, Carpenter, Child, D. Clark, Dubois, Duer, Dyckman, Edwards, Fairlie, Fish, Hees, Hunter, Huntington, Hurd, Jansen, Jay, Jones, Kent, King, Lawrence, Lefferts, Munro, Nelson, Paulding, Platt, Porter, Pumpelly, Rhinelander, Rogers, Rose, Ross, Russell, Sage, Sanders, N. Sanford, Seely, Sharpe, I. Smith, R. Smith, Spencer, Stagg, Steele, I. Sutherland, Ten Eyck, Tuttle, Van Buren, Van Horne, S. Van Rensselaer, Van Vechten, Verbryck, A. Webster, Wendover, Wheaton, E. Williams, N. Williams, Woodward, Yates—61.

NOES—Messrs. Baker, Barlow, Birdseye, Bowman, Briggs, Brooks, Burroughs, Carver, Case, R. Clark, Clyde, Collins, Cramer, Day, Dodge, Eastwood, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunting, Knowles, Lansing, A. Livingston, P. R. Livingston, M'Call, Moore, Park, Pike, President, Price, Reeve, Richards, Rockwell, Root, Rosebrugh, R. Sandford, Schenck, Seaman, Sheldon, Starkweather, D. Sutherland, Tallmadge, Taylor, Townley, Townsend, Tripp, Van Fleet, Van Ness, Ward, E. Webster, Wheeler, Woods, Wooster—59.

The committee then rose and reported the amendment of the constitution relative to the executive department, and the Convention adjourned.

FRIDAY, SEPTEMBER 14, 1821—(8 *o'clock, A. M.*)

At a meeting of the Convention, assembled by the special convocation of the President, he announced to them the unpleasant intelligence of the sudden death of one of the members, Mr. JANSEN, of Ulster, and mentioned that in the recess he had taken upon himself the appointment of a committee, consisting of the surviving colleagues of the deceased, Messrs. Clarke, Hunter, and Dubois, together with Messrs. Wendover and Duer, to make arrangements for the funeral.

The following resolutions were then adopted by the Convention:

Resolved, That the members and officers of this Convention, as a mark of respect to the deceased, accompany the corpse to the steam-boat.

Resolved, That the members and officers of this Convention wear crape for the remainder of the session.

MR. HUNTER, from the committee appointed to make arrangements for the funeral of the Hon. HENRY JANSEN, deceased, reported, that as it had been determined, by the friends of the deceased, to take his body to his late place of residence in the county of Ulster, the committee had agreed to the following order of procession, to accompany the corpse to the steam-boat, to wit:—

1. The Chaplains to the Convention.
2. The corpse and pall bearers.
3. The relatives of the deceased.
4. The committee of arrangement, and boarders in the same family with the deceased, as mourners.
5. The physicians.
6. The President and Secretaries of the Convention, preceded by the sergeants at arms.
7. Members of the Convention, two and two.
8. Governor and Lieutenant-Governor.
9. Judges of the supreme court.
10. Mayor and corporation of the city of Albany.
11. Other public officers.
12. Citizens of Albany and strangers.
13. The door-keepers of the Convention.

The President then left the chair, and the members were invested with the badges of mourning, and at 9 o'clock, formed in procession in front of the capitol, and escorted the corpse to the steam-boat, on board of which it was embarked for Kingston, the residence of the deceased. At the boat religious exercises of admonition and prayer were performed by the Rev. Dr. Chester, in presence of a numerous concourse of the members and citizens. Messrs. Van Vechten, Gen. Root, Fairlie, Van Horne, Dubois, and Hunter, acted as pall bearers; and the corpse was preceded by the reverend clergy of the city, officiating as chaplains to the Convention.

Having returned to the capitol, at 10 o'clock the President resumed the chair; and

On motion of GEN. ROOT, the Convention adjourned over to Monday next.

MONDAY, SEPTEMBER 17, 1821.

The President took the chair at the usual hour, and after prayers by the Rev. Dr. CUMMING, the journals of Friday last were read and approved.

MR. VAN BUREN, from the committee on so much of the constitution as relates to the power of appointment to office, and the tenure thereof, reported, that in the opinion of the committee, the following amendments of the constitution ought to be made, viz:

MILITIA OFFICERS.

Resolved, That the council of appointment, as established by the existing constitution, ought to be abolished.

Resolved, That appointments and selections for offices in the militia, ought to be directed by the constitution to be made in the manner following, viz,

1st. Captains and subalterns by the written votes of the members of their respective companies; and non-commissioned officers to be appointed by captains.

2d. Field officers of regiments by the written votes of the commissioned officers of the respective regiments.

3d. Major-generals, brigadier-generals and commanding officers of regiments, to appoint the staff officers of their respective divisions, brigades, and regiments.

4th. The governor, to nominate, and by and with the advice and consent of the senate, to appoint all major-generals, brigadier-generals, and adjutant-general.

5th. That it should be made the duty of the legislature to direct by law the time and manner of electing militia officers, and of certifying the officers elected, to the governor.

6th. That the constitution ought to provide that in case the electors of captains, subalterns, or field officers of regiments, shall neglect or refuse to make such election, after being notified according to law, the governor shall appoint suitable persons to fill the vacancies thus occasioned.

7th That all commissioned officers of militia be commissioned by the governor, and that he determine their rank.

8th. That the governor shall have power to fill up all vacancies in militia officers, the appointment of which is vested in the governor and senate, happening during the recess of the senate, by granting commissions which shall expire at the end of the next session of the legislature.

9th. That no officer, duly commissioned to command in the militia, shall be removed from his office, but by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court martial pursuant to law.

10th. That the commissions of the present officers of the militia be no otherwise affected by these amendments than to subject those holding them, to removal in the manner above provided.

11th. That in case the mode of election and appointment of militia officers now directed, shall not after a full and fair experiment be found conducive to the improvement of the militia, it shall be lawful for the legislature to abolish the same, and to provide by law for their appointment and removal: Provided two thirds of the members present in each house shall concur therein.

CIVIL OFFICERS.

Resolved, that instead of the mode now provided for, the appointment of civil officers, the constitution ought to be so amended as to direct their election and appointment in the manner following:

1st. The secretary of state, comptroller, treasurer, surveyor-general, and commissary-general, to be appointed as follows, to wit: The senate and assembly shall each openly nominate one person for the said offices respectively, after which nominations they shall meet together, and if on comparing their respective nominations they shall be found to agree, the person so designated shall be so appointed to the office for which he is nominated,—if they disagree, the appointment shall be made by the joint ballot of the senators and members of assembly, so met together as aforesaid.

2d. That the governor shall nominate, and, by and with the advice and consent of the senate, shall appoint the attorney-general, sheriffs, and all judicial officers, except justices of the peace.

3d. That the clerks of courts including county clerks, be appointed by the courts of which they respectively are clerks; and district attorneys by the courts of common pleas.

4th. That the mayors and clerks of all the cities in this state, except the city of New-York, be appointed by the common councils of the said respective cities.

5th. That there shall be elected in every town in this state by the persons qualified to vote for members of the legislature, so many justices of the peace

as the lagislature may direct, not exceeding four in any town. That every person so elected a justice of the peace may hold his office for four years, unless removed by the county court or court of common pleas, for causes particularly assigned by the judges of the said court. And that no justice of the peace shall be so removed until notice is given him of the charges made against him, and an opportunity afforded him of being heard in his defence.

6th. That all officers under the authority of the government of this state in the city of New-York, whose appointment is not vested in the common council of said city, or in the governor, by and with the advice and consent of the senate, shall be appointed in the following manner, to wit: The inhabitants of the respective wards of that city, qualified to vote for members of the legislature, shall elect one person in each of the said wards, and the persons so elected shall constitute a board of electors for the appointment and removal of all such officers—That immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes—The seats of the electors of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year, and of the third class at the expiration of the third year; so that one third may be chosen every year; and if vacancies happen by resignation or otherwise, they shall be supplied by the wards in which they happen, in the manner above mentioned—And that no such elector shall be eligible to any office within their gift, during the time for which he shall be elected.

7th. That all the officers which are at present elected by the people, continue to be so elected; and all other officers whose appointment is not provided for by this constitution, and who are not included in the resolution relative to the city of New-York, and all officers who may be hereafter created by law, may be elected by the people, or appointed as the legislature may from time to time by law direct, and in such manner as they shall direct.

TENURE OF OFFICE.

Resolved, That the tenure of the offices herein after named be as follows:

1. Treasurer to be chosen annually.
2. Secretary of state, comptroller, surveyor and commissary general, to hold during the pleasure of the legislature—removable by concurrent resolution.
3. Sheriffs to be appointed annually, ineligible after four years, and to hold no other office at the same time.
4. Judges of the courts of common pleas (except the first judge) and surrogates to be appointed for five years, removable by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended.
5. Attorney general to hold his officee during the pleasure of the governor and senate, removable by the latter on the recommendation of the former.
6. Recorders of cities by the same tenure, except that the recommendation of removal shall state the grounds.
7. Mayors of cities to be appointed annually.
8. Clerks of courts and district attornies to hold during the pleasure of the courts appointing them.

Schedule of the number of officers in the state holding their commission under the council of appointment as at present organized, and showing also the number and nature of the officers which will be appointed by the governor and senate, if the system, recommended by the committee, be adopted.

Civil appointments under the council of appointment.

There are 52 counties in the state, and 639 towns, (allowing the wards in cities to be equal to towns)

One chancellor, five judges of the supreme court, and one judge of the court of probate amounted to,	7
First judge and four other judges in each county, amounted to,	260
Four justices in each town,	2556
One clerk, one surrogate, and one sheriff to each county,	156
Auctioneers in the state	316
Coroners in the state,	630

Masters in chancery,	*510
Public notaries,	307
Inspectors of turnpike roads,	70
District attornies,	52
Commissioners to acknowledge deeds, &c.	1136
Examiners in chancery,	25
Inspectors of beef and pork, and all other inspectors for commercial or mercantile purposes,	312
Other officers not particularized,	326
Total,	6663

* Some of the masters in chancery not being *counsellors at law* cannot act.

MILITARY APPOINTMENTS.

Officers in 25 divisions,	206
" 52 brigades,	312
" 237 regiments—*staff*,	1896
" *Line*,	5346
" 26 battalions—*staff*,	104
" *Line*,	416
Total	8287

RECAPITULATION.

Civil officers	6663
Military,	8287
Total,	14,943

If the system recommended by the committee be adopted; out of the 14,943 appointments now made by the council of appointment, the following only will be made by the general appointing power, viz.

MILITARY.

Major generals,	25	
Brigadier generals,	52	
Adjutant generals,	1—78	

CIVIL.

First judge, and judges of caunties,	260	
Surrogates and sheriffs,	104	
Recorders of cities,	4	
Chancellor, judges of the supreme court, and judge of probate	7—375	
Total,		453

[Mr. Van Buren, in making the foregoing report, stated that a difference of opinion existed among the members of the committee with respect to some of its provisions; and that a particular provision, limited to the city of New-York, had been introduced at the unanimous request of the delegates representing that city.]

The report was committed to a committee of the whole house, and ordered to be printed.

THE EXECUTIVE DEPARTMENT.

Gen. Root understood the chairman of the committee of the whole, on the executive department to have reported that various amendments had been gone through, and that he was not instructed to ask leave to sit again. He therefore thought the proper course would be to refer the report back to the committee of the whole, in order that they might make a perfect report, and he made a motion to that effect. After some discussion on the point of order between the president, Messrs. Spencer, Radcliff, and Root, it was moved by Mr. Spencer, that in consequence of the thinness of the house, the consideration of this report be deferred until to-morrow.

Gen. Root wished business to be done in order. He only desired to see the report of the chairman of the committee of the whole on the executive department referred back to that committee, for the sake of order. He should then

concur in the motion of the gentleman from Albany, that the Convention should not go into consideration of this report to-day. Mr. Root's motion was then put and carried.

THE BILL OF RIGHTS.

Mr. Sharpe then moved that the house go into committee of the whole, on the report of the committee on the bill of rights—which was acceded to, and Mr. Yates was called to the chair, and read the bill of rights as reported by the committee—when the chairman being called on for an explanation of the views of the committee,

Mr. Sharpe stated, that the committee had taken up the bills of rights of other states, of the United States, and of our own state, and compressed the whole into the nine articles read—but other gentlemen may think other provisions important and can add them. A bill of rights setting forth the fundamental provisions of our government, has always been held sacred, and I have seen, as other gentlemen familiar with legislation must have seen, the utility of this bill of rights, which serves as a standard, easily referred to on all constitutional questions: one calculated to restrain useless and improvident legislation.

Chief Justice Spencer thought much of the bill of rights redundant—perhaps, indeed, where rights are so well understood as in this country, it is useless to have any bill setting them forth—yet upon the whole it was deemed proper to keep before the eyes of the legislature a brief and paramount declaration of rights beyond which they cannot go. There was one part of this bill of rights which he thought, however, quite useless, that restraining from cruel and unnecessary punishments—now no punishment can be inflicted but by law---and if the legislature pass laws inflicting punishment, the punishment whatever it be, will not be considered by them as cruel. There are provisions in other constitutions and bills of rights withholding all power not granted; and negating the right of passing certain laws. Such as for example, that no law shall be passed making any thing but gold and silver a tender, and others---but we have thought it unnecessary to add these provisions---gentlemen thinking differently can propose their amendments.

The question was then taken on the first clause, and carried unanimously. The second clause was then read, and

Chief Justice Spencer explained the motives which had induced the committee to except, from the necessity of presentment by the grand jury, certain cases, and principally that of petit larceny, which requires speedy punishment, and which it would be too vexatious, and productive of too much delay, to subject to the form of indictments by a grand jury.

Mr. Radclife wished the question taken on the first paragraph of the first clause, terminating at the words grand jury.

Gen. Root wished information on the extent of the term of "breach of the peace." He had known persons put to trial against their will, without jury, clearly against the constitution of this state, and of the United States—persons who cannot, or will not give bail, are subject to this summary proceeding, which has been winked at because it is summary. But *breaches of the peace* may be very extensive—the sending of a challenge is a breach of the peace. Now is it intended to be provided, that three justices may take up and try a man for sending or accepting a challenge—there are other breaches of the peace of a high nature—a riot, for the commission of high treason or a felony, when the crime is not perpetrated, is still a breach of the peace, but ought surely to be tried on the presentment of a grand jury.

Mr. Buel moved to strike out the words "cases of petit larceny and breaches of the peace." We are taking away the benefit of jury to an extent unknown in other parts of the United States; and the mode of trial which is substituted for it, is not productive of good; it wants solemnity. A person accused of petit larceny, is subjected to a summary trial and conviction before three justices—without the power of appealing; a traveller, at a distance from his friends, may be accused, tried, and punished, without the power of giving bail, or appealing against his sentence. A conviction for petit larceny not only is punished, as a specific offence, but renders the person subjected to it infamous, and incapable of future credibility as a witness, and this without the intervention of a jury.

The Chief Justice stated, the chief object of the committee in reporting these provisions was, to remove the doubt which had been heretofore expressed, of the constitutionality of this mode of proceeding. There are inconveniences which the gentleman last up has stated in these provisions; but we do not find upon the whole, that the practice they are meant to sanction, has been abused, and there would be great inconveniences and expense attendant on any other course. As to the breaches of the peace, of the nature spoken of by the gentleman from Delaware, the greater offence merges the lesser one; and after all, it is left to the legislature, to decide what are considered exceptions within the meaning of the clause. Mr. Spencer dilated upon the delay and expenses attendant on any other course.

Mr. Radcliff stated, that no provision, with respect to petit larceny, was intended to be introduced into our constitution. It existed before the actual constitution was formed under the old colonial government. As to the cases of assault and battery, it may, perhaps be advantageously added, "provided they be unaccompanied by any other offence in intent." A sending of a challenge is not a breach of the peace. The legislature is left to determine what these offences are, and this seems the best course. I hope the motion to strike out will not prevail.

Mr. Sharpe. More time was spent by the committee on the proposition now wished to be expunged, than on any other. It was doubted whether this summary mode of punishment was constitutional, but the increase of slight offences was so great as to render it highly expedient. In the city of New-York, such a summary mode is indispensable. Sir, look at the numerous offences which crowd our courts; jurors and witnesses are now kept monthly from their business, in order to convict a man for stealing a pair of shoes, and taken with the shoes in his hands. Sir, if this system continue, petty offences will go unpunished; reputable citizens will not lose their time to prosecute them. The provisions inserted were merely to provide against this evil.

Chancellor Kent wished to know what was meant by the third article; was the guarantee of a trial by jury there referred to, to extend to the exceptions of the second clause?

Mr. Dodge wished, in seconding the motion of the gentleman from Rensselaer, to call the attention of the committee to that part of the constitution of the United States which requires, that no person shall be convicted of any infamous crime, except on the presentment of a grand jury. Besides, it is now proposed to disfranchise those who may have been convicted of infamous crimes. The abuses of our present law are shocking. And those who have seen its operation will pause before they sanction the clause now proposed, The justices too often have interest or prejudices against the accused. Besides, criminals are often convicted more than twice of petit larceny. If these convictions had been before the Supreme Court, the second offence would be punished by sentence to the state prison: now they are only slightly punished, however frequently they may have been tried. The proceedings, moreover, of a bar-room court of justice, want solemnity. The promiscuous crowd of criminals, jurors, and witnesses, and the want of dignity of all the proceedings, render them of little avail, and make no lasting impressions.

The Chief Justice explained, that he considered the language of the third section as controlled by the exceptions of the second.

Col. Young hoped the motion to strike out would not prevail. He thought the provision of the constitution of the United States, requiring the interposition of a grand jury, would apply only to offences against the United States; and that it should not be construed to interfere with the details of the state government. Why, sir, what would result from striking out this clause? every vagabond who roams through the state, perhaps a deserter from Canada, and commits a trifling offence, must be taken up; the county must support him, sometimes three months, before a grand jury meets, at the cost of fifty or sixty dollars to the county, when the article stolen may not be worth half a dollar. This is punishing the innocent for the guilty: and making the county pay for the crimes of a vagabond. If he can give bail, he is now entitled to liberation or presentment by a grand jury; but if he cannot, or will not give bail, must the

state be at the expense of keeping him. The gentleman from Montgomery (Mr. Dodge,) says, frequent convictions are now made for the same offence. Sir, the legislature can remedy this, and if the present law be onerous they will alter it.

Mr. Burroughs stated, that the provision sought to be stricken out was not only founded in economy but mercy; otherwise, a man unable to give bail would be obliged to remain in prison six or nine months, when, if convicted of the offence with which he may be charged, his sentence at the utmost might not be imprisonment for more than one month. This will, I hope, weigh with the committee.

Mr. Buel stated that the alternative might be given to the criminal, of being speedily tried or of remaining in prison till a grand jury were assembled.—Economy I like, and I wish to see it observed in all our government. But economy in the administration of justice is not always productive of benefit.—It would go more to suppress crime, that the criminal should be solemnly indicted, tried, and if guilty, convicted, by a court of dignity and solemn demeanour, than that he should be speedily punished in the summary mode proposed.---Economy would thus be obtained by the diminution of criminals, rather than by the summary and cheap mode of punishing.

The Chancellor wished to retain the clause, otherwise the delay in the city of New-York especially, would be so great that small offences would pass unpunished.---The remedy would be worse than the evil. The grand jury cannot here attend to small cases---There is not a state in the Union which requires the presentment of a grand jury for petit larceny. In the city of New-York, this provision would be intolerable, and the chairman of the committee, has not painted in half its extent, the magnitude of the evil to them, if the clause proposed should be stricken out.

Mr. Birdseye concurred in the necessity of the provisions proposed to be stricken out; but thought the phraseology not appropriate: under the term, breaches of the peace, vagrants and beggars would not be included: besides, under the statute now existing, the criminal is left to select the tribunal by which he is to be punished.

Mr. Van Buren hoped the provisions would not be stricken out: the only solid objection would be their unconstitutionality, but he thought this objection unfounded. Mr. Van Buren then read the article from the constitution of the United States which was supposed to bear on the question which is found in the article regulating the judiciary of the United States; and which, he contended, was solely applicable to the judiciary of the United States, and to offences committed against them.

The question, on Mr. Buel's motion to strike out, was then taken, and lost.

Mr. Radcliff wished to know why the expression of life or *limb* was retained.—Mr. Spencer said, the clause was taken from the amendments to the constitution of the United States; though it was not expected that the legislature would ever pass laws dismembering a criminal. The expression was rather now retained to designate the offence for which this mode of punishment was formerly enjoined, than as an expression of any punishment that ought otherwise to have been inflicted.

Mr. Radcliff concurred in the explanation given by the gentleman from Albany, but still thought the expression unseemly, and therefore wished a different mode of expression, and moved the following substitute:—After the word *subject*, insert, in cases of felony, after a fair trial, to be put in jeopardy a second time for the same offence; and strike out, from the word *subject*, to the word *limb*, inclusive.

Col. Young wished the words life and limb left out.

Chief Justice Spencer hoped the amendment of the gentleman from New-York would not prevail; it was too general. In a late cause, a trial was had in New-York for manslaughter: the trial lasted several days, and almost a quarter of an hour before the time at which the court must adjourn, the jury came into court, and stated the impossibility of their agreeing, and they were discharged. Upon argument before the supreme court it was decided, with reference to the particular circumstances of the case, that a new trial should

be had; but it would be very dangerous to invest the court generally with the power of deciding, as the amendment moved by the gentleman from New-York would have the effect of doing, upon the fairness or fullness of the trial.

Mr. President hoped the amendment would not prevail. The provision has not been construed to extend solely to felony. There are other cases, such as maiming a neighbour's cattle for which no one should be subject to be twice tried.

Mr. Radcliff wished the word *fair* stricken out of his amendment; and then hoped it would prevail. In the case alluded to by the gentleman from Albany, the trial was full and fair; the parties were heard; the court charged; the jury retired, but could not agree. It was to suit a case I wished this provision to apply—a man having been thus once put in jeopardy, and having ran the gauntlet once, should not, upon any principle of law or equity, be again subject to jeopardy.

Col. Young doubted whether every lawyer would consider it a trial, until the jury's verdict were given in; and if the amendment of the gentleman last up were to prevail, this might become a question. But in striking out the words, "*life and limb*," you make the law clear. We are doing every thing to obliterate the traces of our vassalage to Great Britain; we are about to abolish the oath of abjuration, and the clauses which carry us back to our dependence on Great Britain; and the remnant expression of "life and limb" should go with it.

Chief Justice Spencer. The gentleman last up is right: the expression of *trial* is subject to the doubt he has stated, as to whether it could be a plea against a second trial, that a former one had been held, unless the record of acquittal could be produced; as to the vassalage to be inferred from the British term, "life and limb," we have equally borrowed from thence, and naturalized among us the term, "habeas corpus," and others.

Chancellor Kent wished the words "*full trial*" stricken out—the law is settled, as to the punishment of felony. The trial is not concluded, until the juror's verdict, and if by the fit of a juror, or a fire in the building, the jury be dispersed, or by a mob, or other violence—the maxim of the bar is, that the criminal has not been put in jeopardy.

Col. Young. I understand the settled law of the land is, that after one trial, no one can be subjected to a second one in the same offence—why, then, insert the words "life and limb;" a century hence it may be inferred that we actually retained at this day, the barbarous practice of dismemberment of criminals.

Mr. Radcliff made some further remarks, stating that inasmuch as he had misapprehended some facts in relation to the particular cases cited by the gentleman from Albany, he would urge nothing more on that head. But he still concluded, that when the case was committed to a jury the criminal had been put in jeopardy—and if the jury cannot agree, he shall not afterwards be put on trial.

The question was then taken on Mr. Radcliff's motion and lost.

The President renewed the motion to strike out "life or limb," so as to make the proviso read, that for no offence whatever shall a second trial take place.

The Chancellor said he hoped this amendment would not prevail—otherwise a criminal acquitted, through fraud or management, of a *misdemeanor*, could not be subject to be tried over again.

The President asked if it was meant that a criminal *acquitted* of a *misdemeanor* had ever again been put on trial.

The Chief Justice said not—but that where witnesses had been bribed to keep away, a new trial had been granted.

Col. Young renewed the expression of his hopes, that the words "life or limb," would be stricken out. The question was then taken on striking out the words, and carried. The question on the whole clause was then about to be taken, when

Mr. Fairlie moved that the word "tried" be substituted for "put in jeopardy"—lost.

Mr. Birdseye moved to strike out the words "of petit larceny, assault and battery, and breach of the peace," and insert "under the grade of grand larceny."

THE CHIEF JUSTICE thought the amendment would leave too large a scope to the legislature, and he thought it had better not prevail.

GEN. TALLMADGE observed, that the phraseology proposed would embrace perjury—which it could not be the intention of the committee to sanction. The question was then taken on Mr. Birdseye's motion and lost—and the question on the whole clause was then taken and carried. The third clause was then read, when

GEN. ROOT wished to be informed whether the persons excepted in the second clause, were to have their speedy and public trial by a jury there spoken of. There are now cases in which a presentment is not necessary, and in those cases a trial according to your existing statutes may be had, nolens volens, against the criminal, while here you give him a trial by jury.

THE CHIEF JUSTICE repeated the explanation he had made to the same objection from the gentleman from Albany (Mr. Kent)—that this section must be construed, to except the cases excepted in the second section—if it should be doubtful, however, it might be rendered clear by amendment.

MR. I. SUTHERLAND moved to insert, to this end, the words "on indictment or presentment of a grand jury" after the words prosecution—which was carried. The question on the whole clause was then taken and carried.

GEN. TALLMADGE, before the fourth clause was read, wished to add the following clause—That slavery and involuntary servitude shall not exist, nor be allowed in this state, except for the punishment of crimes, whereof the party shall have been duly convicted, and except in cases of children born of slaves after the 4th of July, 1799, and of minors, indentured apprentices, and servants.

He wished merely to explain his views in offering this amendment, without entering, however, into any debate. The first object was to produce that universal emancipation, which it was due to our country to effect. As to the exception, they who are under the act of '99 are in a state of infancy and subject to involuntary servitude, shall be left as they are—but to all others, he wished to extend immediate emancipation. With regard to the words "involuntary servitude," they are necessary, for in Ohio, where *slavery* is abolished, from the omission of the words in question, hundreds and hundreds, nay, thousands of slaves from neighbouring slave states, are carried over and bound to a perpetual apprenticeship.

THE PRESIDENT, wished the provision to be so amended, as to make the emancipation take place in 1827, the term now contemplated by our laws, and proposed the following—"There shall be neither slavery nor involuntary servitude in this state, otherwise than in the punishment of crimes, of which the party shall have been duly convicted, after the 4th day of July, in the year one thousand eight hundred and twenty seven."

MR. VAN BUREN wished the proposition to lie on the table till to-morrow, as it embraced important provisions and considerations.

MR. CRAMER wished to extend the benefits of emancipation, so as to prohibit the sale of slaves out of the state, and proposed the following substitute—"that the law of this state, passed April 9, 1813, providing for the abolition of slavery, shall not be altered or repealed by any subsequent legislature." The substitutes were all ordered to lie on the table.

The 4th clause, respecting the liberty of speech and the press, being read,

GEN. ROOT said it was doubtless intended to secure the citizen as well against the arbitrary acts of the legislature, as against those of the judiciary—but nothing appeared in this bill of rights to guarantee this liberty.—Every citizen is held responsible for the abuse of the liberty of the press—responsible to whom? to the government? if so, the legislature may make laws punishing what is written against the government, either according to their passion or caprice—They may say to the citizen, you may write freely, but in our turn we will punish freely, if your writings do not suit us.—The court will have the right to determine what is, or is not, proper—The proposition goes on to say "that the truth shall be given in evidence," (Lord Mansfield to the contrary notwithstanding) *if the publication shall be decided to have been made with good motives and for justifiable ends*—But who is to decide this—The court? and then you are no better off than under Lord Mansfield's law, which prevents the truth

being given in evidence. Let us put a case—On the eve of a governor's election, a supposed libel is published: the truth is offered in evidence; but it is said the motive of the publication was not good: it was for the sake of introducing jacobinism, and so the truth may be excluded. Suppose the libel to be on the judiciary—The truth is again offered in evidence; but the publication is said to be made in order to bring the judiciary into contempt; in order to shake the confidence of the people in this important branch of the government. I should like this provision to be amended so as to make the libeller amenable to the individual injured, but not to enable this individual to prosecute at the public expense. Do away with indictments for libels.

The Chief Justice said it was not the purpose of the provision to alter the existing law, but to guard and confine the liberty of the press. This provision is taken from the constitution of other states, of Connecticut and others. [France and Portugal, said Mr. Root, in an under tone.] Its object is to guard the public morals, as well as individuals—to prevent blasphemous publications. To individuals too, it is due that they should be protected from wanton, false, and malignant accusations. These provisions are from Mr. Fox's bill, as the gentleman had said; and the enactment of the law I consider a great point gained for the liberty of the press. The great difficulty of this subject is to render the freedom of the press compatible with the safety and comfort of individuals. The truth from malignant and personal considerations, ought not to be told, when the public have no interest in the question. It ought not to be tolerated, that for the sake of gratifying private resentment, a person should publish the family secrets, the personal defects or infirmities of another, in which the public can have no concern, although the publication be true; all which may be done, if the motive of publishing is not to be considered.

Mr. N. Williams. I understand the object of the gentleman from Delaware to be to abolish indictments for libels. The gentleman, if he reflects, will perceive that this will be a great evil. The libels against the female department of society, many of which our courts have decided over and over again, not to be actionable, can only be reached in this way; and until the gentleman gets a law passed rendering these base libels on the better part of creation, actionable. I hope the provision will remain as proposed. But the gentleman wishes that the jury shall decide as to the motives of a publication, and objects to the determination of this matter by the court, and here I agree with him. And as this part of the section is worded, it may be the interpretation, that the court and not the jury are to decide this: And I should wish it rendered clearer; but according to the present mode of trial, the jury do in fact decide on the motives, because they hear the evidence; and by it they govern their decisions; they decide whether it be a matter of law or fact; but it is easy and desirable to make this charge explicit, and therefore I propose that the words "to the jury" be inserted, so that it will read, "the truth may be given in evidence, if it appear to the jury," so that the jury alone shall have the right to decide.

Col. Young thought the amendment of the gentleman from Oneida would not reach the object—the objection to it is this—as the law would then be constituted, the judge would decide, as to the motive of the publisher, before it came to a jury—thus, a suit is brought, the party puts in his plea in justification, setting forth the truth, and the circumstances, which are calculated to make out his case—the prosecutor demurs to this plea—and it is then for the court to say, before the matter can be submitted at all to the jury, whether the plea be sufficient, or the motives of the publication good. Thus, sir, in fact taking the matter quite out of the hands of the jury. To this, sir, I should not consent; and I hope therefore the clause may be so amended as to increase rather than diminish, as in its present state it would, the certainty with which the whole motive could be brought before the jury.

Mr. Van Buren thought the gentleman from Delaware, well founded in his objection—certainly it has been well explained by the gentleman from Saratoga last up. The operation of the proposed clause, would be to vest the decision, as to the motion, in the court.—Before I sit down, I would express my doubt, whether by adopting any bill of rights at all, we are materially benefiting the

constitution of the state. But if we must go on, I hope the gentleman from Oneida (Mr. N. Williams) will withdraw his motion, that an amendment adopting the language of the present statute on this subject, which is more comprehensive and explicit than the clause under consideration, may be framed and substituted.

Mr. Sanford offered such an amendment, as follows: "The truth may be given in evidence to the jury; and if it shall appear to the jury, that the matter charged as libellous was published with good motives, and for justifiable ends, the party shall be acquitted."

When, on motion of Mr. Spencer, it was agreed to pass over this provision for the present.

The 5th clause, securing persons and effects from unreasonable searches, was then read and carried. The 6th clause, relative to trial by jury, was then read, when

Gen. Root said the trial by jury as *heretofore*, was what he did not wish to become a part of the constitution of this state---It would be better to abolish the trial by jury in civil cases, than retain the words as heretofore. Sir, there is nothing like trial by jury before the supreme court—though there is something like it in the inferior courts; but a trial by jury before the circuits, is mere matter of form, and of most expensive form. There the jury are directed how to find; they have no trouble; take your verdict says the judge; in vain the counsel interferes; the verdict is rendered, subject to the decision of *the supreme court*. If a juror rebel, there is a motion for a new trial. The cause is carried up; the case gets into Mr. Johnson's book; the big one or the small one; the decision of the supreme court is sent back to the circuit; then this decision is law and evidence, and if the jury do not find accordingly, they find against law and evidence. He wished the substance as well as form of the constitutional provision, and therefore proposed the following amendment: "The trial by jury as at common law shall, in all cases, civil as well as criminal, remain inviolate forever; and no court shall grant a new trial after two verdicts in any cause, in favour of the same party. But a trial by jury before a justice of the peace may be regulated according to the practice under the colony of New-York, and in this state since the revolution."

He proposed this in order that the trial by jury might be restored according to its practice under the common law; not as it has been usurped upon both here and in England; but as it was exercised when the jury of the country was considered as the palladium of liberty, when twelve honest men could defend the liberties of their fellow countrymen, against oppression from any quarter.

Mr. Dodge moved to rise and report; lost.

The Chief Justice wished, under the indulgence of the house, to say a few words in explanation to the only charge, he observed the gentleman from Delaware to have made; that the trial by jury has been rendered null in consequence of the directions given by the court; now I do say in the face of this Convention, and of that gentleman, that no such direction ever was given except by the consent of the counsel on both sides; whenever any objection was made on either side, such direction has never been given, as far as I remember, know, or believe.

The Chief Justice made some further remarks in explanation; when it was moved to pass over this clause. Carried.

The seventh section, relative to requiring bail, was then read.

Mr. Van Buren asked whether the last words, "where the proof is direct, or the presumption great," were meant to apply to all the excepted crimes, including murder.

The Chief Justice said the intention was to make these words applicable to the then cases excepted. The object of the committee was, that no bail should be taken, when it might be the desire of a party to pay in money rather than in person; where, by getting friends to give bail, a person suspected of a heinous offence, should have the opportunity of taking himself off, and escape punishment by the sacrifice of the amount of the bail.

Mr. Briggs. If I understand the language of this section, persons in the cases excepted, are not to be bailable at all. Is this the language of the

clause? I wish it to read otherwise; and then Mr. Briggs transposed the clause, to effect his proposed object.

The Chief Justice said he had no objection to a transposition of the sentence; but, after Mr. Briggs had made the transposition, finding it did not express his meaning, he withdrew it.

Mr. Sharpe and Mr. Nelson made some few remarks. The latter moved that the words "term of years," be stricken out; which was carried. The question was then taken on the whole section, and carried—so as to leave the provision that bail shall be taken in all cases except for crimes punishable with death, or imprisonment for life, when the proof is evident, or the presumption great.

The eighth clause, guaranteeing the right of public meetings, and of petitioning, being read,

Mr. Duer moved the following substitute, of which he supported the propriety by a few remarks:

"The right of the citizens to assemble in a peaceable manner to petition for redress of grievances, and to discuss the measures and conduct of their rulers, shall not on any pretext be infringed; nor shall any citizen be held to answer criminally or civilly for any opinion expressed by him at said meeting."

Col. Young thought there was one difficulty in this provision, though in the main he liked it better than the other. He would not give to a person in such public meeting, the right of libelling persons in authority, without being responsible, as in other cases.

Mr. Duer thought the gentleman from Saratoga (Col. Young) mistook the bearing of this provision. The object of it was not to authorize the promulgation of facts, injurious to individuals, but to protect him in the expression of opinions, which, by the law of libel, as it now stands, are subject to prosecution.

Mr. Van Buren agreed in opinion with the gentleman from Saratoga, that the latter part of the clause would be productive of evil.

Mr. Duer could not consent to withdraw or alter his amendment. He conceived it essential that the citizen should have unbounded latitude in speaking of the measures and conduct of his ruler, being responsible, as elsewhere, for any facts he may allege. Sir, there has not been a resolution passed at any of your political meetings for years past, which may not be made the subject of a libel suit, as the law now stands. This question was once tried by Governor Lewis in a suit against Col. Few—and I am not aware that the supreme court then decided, that the citizen had the right, which it is the object of this provision to guarantee to him, of freely canvassing the motives and conduct of their public servants. I am desirous, said Mr. Duer, to have this principle incorporated in your bill of rights, for it is proper that the right of the people to assemble and publicly canvass the motives and conduct of their rulers, should be acknowledged, or the law of libel be so modified, as that it should not be openly violated, as it now is, I again repeat, in the resolution of almost every political meeting. I must therefore persist in the clause.

Mr. Van Buren and Mr. Williams objected to this clause; and

Mr. Duer again spoke in its favour.

On motion of Mr. Russell, the committee then rose and reported, and asked leave to sit again; and

The Convention adjourned.

TUESDAY, SEPTEMBER 18, 1821.

The Convention met at 10 o'clock. Prayer by the Rev. Mr. Davis; after which the minutes of yesterday were read and approved.

THE BILL OF RIGHTS.

Mr. Sharpe moved that the Convention now resolve itself into a committee of the whole on the unfinished business of yesterday, (the Bill of Rights.)

Mr. P. R. Livingston objected to it, and moved that the committee of the whole be discharged from the further consideration of the business of yesterday, with a view that the consideration of the bill of rights be postponed until 1st January. We saw yesterday the whole day spent in debate, in which the judicial and legal talent of this house was engaged, and yet the result is such, as I persuade myself, no one will think adequate to the time spent on it.---Sir, a bill of rights is the mere repetition of the fundamental rights of this people, which have never been violated, and which, after forty years of practice under our constitution, we need not fear to see violated. Has the trial by jury, the liberty of the press, the writ of habeas corpus, ever been denied, invaded, or suspended? We saw yesterday two luminaries of the law, whom, by our constitutional difficulties we see on the verge of a constitutional grave; we saw them, in this awful situation, differing as to a most important point of law; we heard the gentleman from Oneida (Mr. Platt) assert, that in the provisions introduced into one clause, the sanction of the law was about to be withdrawn from the female sex, and we all saw the sensibility with which this house received the intimation of possible wrong intendsd to this interesting portion of our creation. We heard the gentleman from Otsego (Mr. Van Buren,) assert, that by one of the provisions reported, the motives of a publication, which are now to be judged by a jury, are henceforth to be decided on by the court. You find my honourable colleague, (Gen. Tallmadge,) would carry you to the meridian of Washington, and arouse and mingle in this debate all those feelings which grew out of the Missouri question. We heard the gentleman from Delaware (Mr. Root,) who for ten years I have been proud to recognize as my friend and political mentor, and from whom I have seldom had occasion to differ, stating, that the trial by jury was a dead letter, owing to the directions now given by the court; and we saw an honourable judge rise in his place, and solemnly invoke his conscience in asserting that no such directions as imputed had ever been given. We saw my friend from Orange (Mr. Duer,) rise and propose a clause which some other members think would prostrate all rights.

If then the talents of the judiciary, cannot agree on a bill of rights; how shall we simple yeomanry be able to pronounce upon the great abstract points in jurisprudence, which are so interesting to the community at large? After all the contradictions and collisions on the subject, the Convention are still in the dark. Is it not discreet on this occason, to stop where we are? I think inaction, here, is wisdom; and silence, is prudence. I am unwilling to put it in the hands of the people of the state, to form an opinion on this subject, lest they may cheat themselves. Could it be shown that any of the rights of the people in this great community, were in jeopardy, from the bad administration of criminal jurisprudence. I should be for putting the question to the people, to get relief as quick as possible. If I am not mistaken, we have been informed by some gentlemen of the committee who made this report, that when they had the subject under consideration, it was thought that such a report was in a great measure unnecessary; as there were no evils growing out of our former system, which would be probably remidied in this way.

What are your bills of rights? They are declaratory acts of the people, that the legislature shall not encroach upon their rights—and your constitution is very much the same thing. The people resume certain rights, which the legislature dare not infringe. The great branches of our government are so calculated as to guard and check each other; but when that branch, which is the great barrier between legislative encroachment and the rights of the citizens, is disposed to do wrong, it is to be feared there is something serious; that there is a want of virtue, of morals, and of public regard for the happiness of the people. On the contrary, should the legislature pass an act, encroaching on the privileges of citizens, and should it improvidently get into your statute books—I ask, whether it could be enforced, against the interest and happiness of the people? When the body politic becomes corrupt, there is nothing which can withstand them. They hold all power, and they will exercise it right or wrong.

Economy is very disirable to this Convention. Many of the citizens of this state are taken up with this business, and detained from their occupations and

their families—the public expense is worthy of consideration. Sir, the great body of the public will not complain, remain as long as you will, only satisfy them that the objects which you contemplate are worthy of public consideration.

Mr. L. concluded, by expressing an opinion, that if they continued as they had commenced, to discuss all the little *minutia* which would naturally present, they would in all probability spend a week, and do nothing more than he now proposed, which was to postpone.

Chief Justice Spencer. I yesterday stated my impression that a bill of rights was superfluous, owing to the general understanding, in this community, of their rights; though, on further reflection, I thought it would be advantageous to have some of the fundamental provisions briefly stated. I have, since the discussion of yesterday, come to the conclusion of the gentleman from Dutchess. Before going further, I wish to make some explanation as to a point touched on yesterday by a gentleman from Otsego (Mr. Van Buren.) It was supposed that in the 4th clause, it was intended to transfer to the court the privilege, which now belongs to the jury, of deciding on the motive of persons making libellous publications. Sir, there was no intention of taking the committee by surprize, but to appeal to them whether, under certain circumstances, it might not be safe to entrust the court with the discretion of deciding on motives.

He then adverted to a gross case of libel upon a female, of which he stated the circumstances, and appealed to the committee whether, in such a state of affairs, it was tolerable, that the court should sit and hear the most gross and shocking evidence, however irrelevant, submitted to the jury, before it could be determined whether or not it should be received. Mr. S. further stated, that in questions of great legal delicacy, innovations were proposed, which could not be duly considered; and he, therefore, concurred in the motion of the gentleman from Dutchess.

Gen. Tallmadge. When, in a former debate on the council of revision, I expressed my belief that in a state like ours, where all right is acknowledged to reside in the people, a bill of rights, setting forth the privileges of the people would be useless, nay, might be injurious; because in purporting to set forth the rights of the people, if any were omitted. they might be considered to be yielded. But a bill like this reported, is not a bill enumerating the rights of the people, but restricting the power of the legislature. It is to restrain factious majorities and violent proceedings of the legislature—it is to determine that under no circumstances, the writ of habeas corpus shall be withheld from the citizen. But my colleague fears the revival of the Missouri question. Sir, there is no apprehension of the revival of this question. There is not, unless I greatly mistake the character of this body, or of the individuals composing it, any one who would oppose the great principle on which that question was raised. But, sir, if it be revived, are we to shrink from the controversy? No, sir. I think it fair to say, that, while my life lasts, the oppressed people who gave rise to that discussion, shall receive my support, in every place, and every situation where I may, with propriety, and without violation of legislative usages, introduce it. I, therefore, hope the motion will not prevail.

Mr. Van Buren stated that he had yesterday expressed his expectations that the result now moved for would be produced. A bill of rights, sir, is a privilege, according to the original signification of it, a concession extorted from the king, in favour of popular liberty; but how does that apply here? Mr. Van Buren then went into a history of the origin of bills of right in England, and terminated by expressing the wish, that as a bill of rights, this might not prevail; but that any provision in it, which might be deemed salutary, should be engrafted as separate amendments into the constitution.

Mr. Briggs. The great difficulty in the opinion of some gentlemen, indeed of most gentlemen, seems to be that we cannot agree upon these subjects. But it seems to me, sir, when we act upon legislative report, then, sir, we can settle these difficulties. It does not seem to me material, whether we settle them now or then. I don't pretend to be able to judge much about the necessity of a bill of rights.

Mr. Sharpe said the provisions of the bill of rights may be as well considered as separate amendments to the constitution, and added in their proper places, when the draft of the amendments generally shall be under consideration. These provisions have already been discussed; and if the report is now to be postponed, and the subject brought up in another shape, the same discussion will be again gone through, and much time lost.

Mr. Van Buren wished the gentleman from Dutchess would modify his motion, so as to refer the report on the bill of rights to another committee, to ascertain what parts of it may be engrafted in their proceedings.

Mr. Livingston said that the Convention could not suppose him unwilling to comply with any suggestion as to saving time; and he would, therefore, so modify his motion as that the committee of the whole should be discharged from the further consideration of the bill of rights, and that the same be referred to the house when in committee of the whole, on Mr. King's report. The motion was then put in this shape, and carried.

Mr. Duer presented a memorial from sundry inhabitants of the county of Orange, praying that all legislatures might be hereafter prevented from fixing their own pay, and that the same should never exceed $2 50 per diem—the memorial was read and referred to the house when in committee ot the whole on Mr. King's report.

THE EXECUTIVE DEPARTMENT.

On motion of Gen. Root, the Convention then again resolved itself into a committee of the whole, on the report of the committee on the Executive Department—Mr. Radcliff in the chair.

Gen. Root moved to strike out five, so as to make the age *thirty*, instead of thirty-five. I believe a governor of *thirty* would do very well—as well as one of *fifty*—the motion was put and carried.

Mr. Russell moved that the power of pardon or commutation of punishment in cases of treason (where alone it is granted) be taken away from the legislature—carried.

Mr. P. R. Livingston wished to insert the words "*by message*," so as to make it the duty of the governor to address the legislature by message instead of speech. This latter mode has been productive of great inconvenience and expense. I had the curiosity once to look over the journals, and I ascertained that it had cost $70,000 to the state during ten or fifteen years, in debate about the reply to a governor's speech. This speech is a relict of monarchy, founded in the love of pomp, and splendour, and show. Besides, when the two houses are of a different political character, one approves, the other condemns the speech; and in 1814, the assembly spent eleven days in discussing the propriety of an answer to the governor's speech, yet we all know that neither a speech nor an answer is legislation. In the general government, until Mr. Jefferson's accession, a speech was delivered by the President and an answer was read; but Mr. Jefferson cut up the practice by the roots by sending a message. Besides, for the sake of the harmony due to the proceedings of the two houses, when of different political characters, it is best to have a message. We have seen, and might see again, a governor on his own carpet, obliged to listen to sentiments which must be odious to him; obliged to submit in quiet to a flagellation, as bitter as political hostility could make it. To be sure, the governor has the last word, and he sends back a reply more bitter, if possible, than the answer; but all this is injudicious and improper, and will be done away by adopting the proposition I have the honour to make.

Mr. Tompkins thought the motion unnecessary, as we shall now probably expunge from the constitution the provision which rendered it the duty of the governor, in compliance with ancient custom, to deliver a speech in person. When I entered upon this office, I consulted the venerable men who had preceded me in it, as to the propriety of dispensing with this practice, but they all concurred in the opinion, that according to the usage established since, and adopted from the colonial government, it could not be dispensed with; but as we shall, I hope, expunge these provisions from the constitution, I think the motion unnecessary.

Mr. P. R. Livingston thought there was nothing in the argument of the gentleman. We do not find that it is incumbent upon us to adopt the forms of the colonial government. The gentleman would surely not require, because a governor under the colonial system might have worn a red night cap, that our governors also should wear a similar one, any more than that they should wear a black velvet suit.

Mr. Tompkins replied and maintained the opinion he had formerly expressed, and went into the consideration of the usages on which this custom was founded, and of the motives which led to its adoption among us.

Mr. Briggs. When we do, sir, descend to such particulars, we should be sure, sir, that the object we have in view will be answered by them, sir. I am yet to learn, sir, that a message, in high party times, may not be answered as well as a speech.

The question was then taken on Mr. Livingston's motion, and carried.

Mr. Jay. A day or two ago, the words, "admiral of the navy," were struck out, for what reason I cannot conjecture; seeing that this state may, under certain circumstances, have a navy; and that, from our situation, it may become expedient to have such a navy. Perhaps the objection is to the term admiral; and I therefore move, that the report be so amended as to read, "commander in chief of the militia and navy."

Chief Justice Spencer said, he made the motion, because he thought the title of admiral, as an appendage to the governor, ridiculous; and because he thought it quite improbable we should ever have a navy. As however, the gentleman from Westchester has, by his amendment, done away the ridicule of the title, I have no objection to the motion.

Mr. King wished the gentleman would amend his motion, so as to insert the word, "army," in order that, if the state should possess, as it is by no means improbable, a force of the nature of an army, the governor may be the commander thereof. It is, too, not at all improbable; nay, the reasonable presumption is, that this state will one day possess a considerable navy. In time of war, although the defence of the coast depends upon the general government, it may be necessary, on some sudden emergency, for the state of New-York to raise a force which will repel the enemy, and defend our shores. Under such circumstances, it appears singular to expunge from the constitution a provision which would secure a head and chief for such an occasion.

Mr. Tompkins assented to the amendment of the gentleman from Queens. and thought without it the title of commander in chief of the militia might be as ridiculous as that of admiral; inasmuch as that would not give him command over an army, which it was nevertheless certain this state might have.

Mr. Jay then amended his motion so as to read "commander in chief of the land and naval forces," which, after some further remarks from the Chief Justice, was put and carried.

Mr. King moved to strike out "by virtue of his office," which was carried.

Mr. Childs. Though unaccustomed to business of this kind, I would submit the propriety of striking out the words, "who shall have been fourteen years a citizen of the United States," and insert natural born citizen of the United States. I can conceive no advantage in permitting a foreigner to be the governor of this state; I can conceive that great inconveniences may arise from it.

The motion was put, and carried almost unanimously.

Chief Justice Spencer wished to strike out the words which restricted the governor to a service of eight out of ten years. This provision he thought a restriction upon the people, who were debarred from choosing the man they might prefer. We have seen the governors heretofore continued for much longer terms, and the gentleman who from 1807 to 1816 conducted the government of this state with great advantage to it, and whose services I have always been proud to acknowledge, might, if a similar provision to this had existed, have been debarred from re-election at a time when his services might have been most essential. There can be no reason why the people should be restricted from choosing whom they please, and as often as they please.

Mr. Briggs. I do hope, sir, this provision won't be struck out. It is, sir,

a fundamental principle of republican government that we should have a frequent change of rulers. Why, sir, we don't let a sheriff serve over four years; and, sir, if a man gets the people attached to him by his arts and his blandishments, sir, shall there be no remedy? It seems to me, sir, this won't do.

Col. Young said, if the governor held, as a sheriff does, by appointment from a council, there might be some reason in the arguments of the gentleman from Schoharie; but since this officer is elected by the people, such a provision can only restrain the people against themselves. I hope the motion will prevail.

The motion was then taken on striking out, and carried; and subsequently, the motion on the whole report, as amended, was taken; the committee rose and reported the result to the house; when, on the motion to accept the report,

Gen. Root rose, to move a reconsideration of the vote, which was taken upon the term, for which the executive should hold his office; and proposed an amendment, the object of which was to reduce the term from two years to one.

He said he had presumed to offer this amendment, from the circumstance, that when the question was taken, there was but three majority, for two years; and he had understood that some of the gentlemen who voted for two years were of the opinion that one would be preferable. He should suppose there were other considerations why this vote should be changed. The last gentleman who had spoken on the subject, after a very able speech, drew the conclusion, that two years was the proper term of service. The principal arguments in favour of two years, are, that every time you elect a governor, you bring a novitiate into office, who is not only ignorant of the fiscal and political concerns of the state; but of its geography.

It would require one year, in this gubernatorial school, before a person would be qualified to serve—for my part I should rather establish a school to educate them, upon the principle of the cadet academy, at West-Point.

I do not believe, but that men may be found, who will be willing to fill that chair, who are not only acquainted with the geography of the state, but with its internal concerns, its public welfare, and its interests.

They may not understand the geological character of every region of the state, as well as some others; but the great interests of the state may be very familiar to them. These gentlemen seem to suppose, that at all events, this man must be turned out of office at the expiration of one year. It is therefore, thought proper to make the time longer, and then by having ignorance to reign over us two years, we may have one year of experience.

Sir, there will be no difficulty in finding men of intelligence, to preside over the affairs of this state; and if you can support virtue, there is no doubt he will be re-elected, as along as the people are pleased with his administration; as the difficulty is now removed, as to rendering him ineligible after eight years. The great convulsion that the state must experience at every governor's election, has been sounded in our ears. You are willing it should explode once in two years, but not every year. We are told that a governor is to come into office, and remain one year, or just long enough to learn his duty, and then go out with this great explosion. You are, therefore, to treasure up wrath, for until you can make him feel it, a gentle corrective annually, will not do; you must wait till the end of two years, and then inflict the bastinado. I would rather inflict a little annually, and not be heaping up wrath against the day of wrath.

Sir, my honourable and amiable friend from Rensselaer, stated the truth on this subject, when he said "submit it to the people, whether you will have an annual or a triennial election, and you will have 40,000 majority for an annual election."

Mr. R. closed, by expressing his anxiety that the people might be gratified with their desires on this subject, and that he should be happy to hear any arguments that might be offered in favour of two years, other than those which have already been urged.

Chief Justice Spencer said, we had lived under this constitution for a long period, without any complaints with regard to the governor's term of service. He knew it had been said, that if this question were submitted to the people,

there would be a majority of 40,000 in favour of making the office of the chief magistrate of annual duration. He could not believe this would be the result. But still there was no means of ascertaining popular sentiment. There was one thing which he deemed worthy of the consideration of the Convention, that the sense of this body has already been taken, by which it appeared that there was a majority in favour of two years; and he asked if it would be wise or discreet, since there is among us such a diversity of opinions, and as we are so nearly divided on the subject, to again call it up for consideration. It was desirable that on this, as on all other questions, we should proceed with harmony; and to preserve this, some deference should be paid to a plurality; and by carrying this point too far, he feared the other amendments might be endangered. It appeared to him they were vibrating to the extremes. The term of service had heretofore been three years; it was now urged to reduce it to the least possible term, which was one year. He had hoped that the concession of those favourable to the two extremes, in establishing the term at two years, would have put this question at rest. It has been said by some gentlemen, that they should be influenced by the report of the committee of the whole, when on the appointing power. We have not yet considered that point, and do not know how it will finally be established. If we concur in the report of the committee on the appointing power, we shall take from the executive his agency in the appointment of about 16,000 officers, and leave him only the privilege of nominating between four and five hundred. If the appointing power is a patronage to the governor, which enables him to fix himself more permanently in office, which I very much doubt, it would naturally be supposed, that his being stripped of this power, would induce those gentlemen to vote for the longest term. What else have we done? We have given to the governor the power of returning bills to the legislature. Is this a power which will in any way add to the popularity of the governor? No—if it be exercised firmly, it will shipwreck him. The fears which have been expressed on that subject are well grounded; if he endeavours to resist the passage of a law, he endangers his existence in office. Again—the power of pardoning, in all cases except treason, has been given to the governor, including the crime of murder, which did not before belong to him. Can this be considered as a patronage to the executive? If it shall be used to gratify the individual, who has been convicted, he would venture to assert, that it would be at the peril of the executive. Mr. S. here spoke of the case of a reprieve, which at a former time had agitated the community; and although the governor had not the power of pardoning, and did not attempt to exercise such power, still his office was endangered. He could not conceive, that the Convention had done any thing to add to the patronage of the governor, or which will enable him to fortify and extend his influence. On the contrary, they had imposed upon him duties, which would expose him to the probable loss of public favour. We are now altering a constitution, under which we have lived for forty-four years, without any complaint on this subject, as far as he could learn, and carrying the point to an opposite extreme. He would not enter into the reasons which had been so ably urged on this occasion—they were perfectly convincing to him—and when it was considered that the state now contains more than 1,300,000 inhabitants, and in the course of half a century will probably contain from three to five millions, it must convince every rational man, that an annual election will be productive of mischievous consequences.

Mr. Radcliff remarked, that at present he should be against the motion; but if the patronage of the executive were increased, he should feel at liberty to alter his vote.

Mr. Nelson. It was not his intention to enter into this discussion at large. The whole subject has been ably examined. He only intended to examine the facts as to public opinion which hon. gentlemen, in favour of one year, state are so strongly in favour of their position. It has been repeatedly urged that if the question was submitted to the people of this state, whether they would have one year or two, for the governor's term, there would be forty thousand majority in favour of one. He could not believe it. He was from the western part of this state, and had taken some pains to collect public sentiment in that quarter,

as well as from the discussion of public prints in the state, on the subject of amendments to the constitution, and he could say he never heard the question agitated as to reducing the governor's term until he arrived in Albany. Gentlemen, he apprehended, mistook the feeling of the people on the subject of frequent elections; he believed they were sick and tired of them, unless they could be conducted with more temperance and sobriety than they had been heretofore, and that even once in three years was often enough for this community to be agitated and convulsed, and all the social enjoyments, which make life desirable interrupted, by the violence of the election of your governor. He would ask gentlemen, why even in high party times, when the public mind was greatly excited, it required so much exertion to get voters to the poll, if it was a right which they so ardently embraced. Societies have heretofore been formed, your school districts in some instances organized, and every means which human sagacity could devise, resorted to, for the purpose of procuring electors at the polls. In 1817, when your present governor was first elected to his office, the public mind was tranquil. The citizens of this state had an opportunity of enjoying the right of election without partaking of its violence and madness; and yet we find that he was elected to his office by less than one half of the votes of the state. He asked if this did not shew that gentlemen had mistaken the feelings of the people?

Mr. Nelson further said, so far as public opinion could be collected on this subject, it was decidedly opposed to any alteration of the governor's term. Defects in the constitution which experience had shewn, had induced the people to call for a Convention—they had defined those defects. In November session of the legislature, 1820, public opinion had been called in question as it regarded their wish for a Convention. He recollected that soon after, the people in almost every county in the state assembled expressly for the purpose of manifesting their sentiments on the subject—resolutions were passed defining the rotten parts of the constitution. You heard the call for the extension of the elective franchise, for the abolition of the council of appointment, and the alteration of the council of revision, but in no instance can you find the expression of public opinion in favour of an alteration in the term of service of governor. He defied gentlemen to point him to a public print, or the expression of a public assembly of citizens, in favour of a reduction of the term of service. And it did seem to him a violation of public trust, an excess of the powers delegated to the members of this Convention, to make alterations in substantial parts of this constitution, which the experience of nearly forty years has not pointed out to be defective.

Mr. King spoke at length, and with great force, against the substitution of one for two years; but the frequent low tones of his voice, rendered it impossible for us to report his remarks.

The question was then taken on substituting one for two, and carried as follows:

AYES—Messrs. Baker, Barlow, Birdseye, Bowman, Briggs, Burroughs, Brooks, Carver, R. Clarke, Collins, Cramer, Day, Dodge, Eastwood, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunting, Knowles, Lansing, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Park, Pike, Pitcher, Price, Reeve, Richards, Rockwell, Root, Rosebrugh, Schenck, Seaman, Sheldon, Starkweather, D. Southerland, Swift, Tallmadge, Taylor, Townley, Townsend, Tripp, Van Fleet, Ward, Woods, Wooster, Young—55.

NOES—Messrs. Beckwith, Brinkerhoff, Buel, Carpenter, Child, Dubois, Duer, Dyckman, Edwards, Fairlie, Fish, Hunter, Huntington, Hurd, Jay, Jones, Kent, King, Lawrence, Lefferts, Nelson, Platt, Porter, Pumpelly, Radcliff, Rhinelander, Rose, Ross, Russell, Sage, Sanders, N. Sanford, Seeley, Sharpe, I. Smith, R. Smith, Spencer, Steele, I. Sutherland, Sylvester, Ten Eyck, Tuttle, Van Buren, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, A. Webster, Wheaton, N. Williams, Woodward, Yates—53.

Gen. Tallmadge wished to restore the words authorizing prorogation. He thought they ought to be restored, from obvious reasons, but forbore any debate. The yeas and nays were called on the motion offered by Mr. Tallmage.

Mr. Radcliff was against the motion now made, because the governor has the veto, which he thought a complete substitution for the power proposed to be given. If the qualified negative could not check the legislature, they ought, when deciding by two-thirds, to prevail.

The question was then taken by ayes and nays, and lost.

AYES—Messrs. Barlow, Birdseye, Briggs, Brinkerhoff, Case, Child, Dodge, Fenton, Hunter, Huntington, Jay, Jones, Kent, Lefferts, Millikin, Nelson, Platt, Schenck, Sheldon, I. Smith, R. Smith, Sylvester, Tallmadge, Ten Eyck, J. R. Van Rensselaer, Ward, Young—27.

NOES—Messrs. Beckwith, Brooks, Buel, Burroughs, D. Clark, Collins, Cramer, Day, Dubois, Duer, Dyckman, Eastwood, Edwards, Ferris, Fish, Frost, Hogeboom, Hunt, Hunting Hurd, King, Knowles, Lansing, Lawrence, A. Livingston, P. R. Livingston, M'Call, Park, Pike, Pitcher, Porter, Price, Pumpelly, Radcliff, Rhinelander, Richards, Rockwell, Root, Rose, Rosebrugh, Ross, Russell, Sage, Sanders, N. Sanford, Seaman, Sharpe, Spencer, Starkweather, Steele, D. Southerland,, I. Sutherland, Swift, Taylor, Townley, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, S. Van Rensselaer, Verbryck, A. Webster, Wheaton, N. Williams, Woods, Wooster, Yates—68.

Mr. Ross then moved to restore the following words stricken out in committee of the whole, making it necessary for the governor to report to the legislature the names of persons pardoned, and the reasons for their pardon.—The question was then put, and lost.

Mr. Starkweather wished to vary the motion so as to make it the duty of the governor to advertise all persons pardoned, the crimes of which they had been convicted, &c.—but upon some suggestion from Mr. Van Buren, he withdrew his motion.

After some discussion on the point of order, as to how the question on the whole report should be taken, it was thus put: "that this report, as amended, be engrossed, re-printed, and laid on the table"—which was carried.

On motion of Mr. Spencer, it was determined that the report on the right of suffrage should be made the order of the day for to-morrow. It was then moved and carried that the Convention do adjourn; and accordingly the Convention adjourned until to-morrow at 10 o'clock.

WEDNESDAY, SEPTEMBER 19, 1821.

The Convention met at 10 o'clock. Prayer by the Rev. Mr. De Witt, when the minutes of yesterday were read and approved.

THE ELECTIVE FRANCHISE.

Mr. Sanford moved that the Convention go into committee of the whole on his report relative to the right of suffrage, which was carried, and Mr. N. Williams was called to the chair.

The report having been read—

Mr. N. Sanford took the floor. The question before us is the right of suffrage—who shall, or who shall not, have the right to vote. The committee have presented the scheme they thought best; to abolish all existing distinctions, and make the right of voting uniform. Is this not right? Where did these distinctions arise? They arose from British precedents. In England, they have their three estates, which must always have their separate interests represented. Here there is but one estate—the people. To me, the only qualifications seems to be, the virtue and morality of the people; and if they may be safely entrusted to vote for one class of our rulers, why not for all? In my opinion, these distinctions are fallacious. We have the experience of almost all the other states against them. The principle of the scheme now proposed, is, that those who bear the burthens of the state, should choose those that rule it. There is no privilege given to property, as such; but those who contribute to the public support, we consider as entitled to a share in the election of rulers.

The burthens are annual, and the elections are annual, and this appears proper. To me, and the majority of the committee, it appeared the only reasonable scheme that those who are to be affected by the acts of the government, should be annually entitled to vote for those who administer it. Our taxes are of two sorts, on real and personal property. The payment of a tax on either, we thought, equally entitled a man to a vote, and thus we intended to destroy the odious distinctions of property which now exist. But we have considered personal service, in some cases, equivalent to a tax on personal property, as in work on the high roads. This is a burthen, and should entitle those subject to it to equivalent privileges. The road duty is equal to a poll tax on every male citizen, of 21 years, of 62 1-2 cents per annum, which is about the value of each individual's work on the road. This work is a burthen imposed by the legislature—a duty required by rulers, and which should entitle those subject to it, to a choice of those rulers. Then, sir, the militia next presents itself; the idea of personal service, as applicable to the road duty, is, in like manner, applicable here; and this criterion has been adopted in other states. In Mississippi, mere enrolment gives a vote. In Connecticut, as is proposed here, actual service, and that without the right of commutation, is required. The duty in the militia is obligatory and onerous. The militia man must find his arms and accoutrements, and lose his time. But, after admitting all these persons, what restrictions, it will be said, are left on the right of suffrage? 1st. The voter must be a citizen. 2d. The service required must be performed within the year, on the principle that taxation is annual, and election annual; so that when the person ceases to contribute or serve, he ceases to vote.

A residence is also required. We proposed the term of six months, because we find it already in the constitution; but we propose this residence in the state, and not in the county or town, so that wherever a voter may be at the time of election, he may vote there, if he has been a resident of the state for six months. The object of this was to enable those who move, as very many do, in the six months preceding an election, out of the town or ward in which they have resided, to retain the right of voting in their new habitations. The term of six months is deemed long enough to qualify those who come into our state from abroad, to understand and exercise the privileges of a citizen here. Now, sir, this scheme will embrace almost the whole male population of the state. There is perhaps no subject so purely matter of opinion, as the question how far the right of suffrage may be safely carried. We propose to carry it almost as far as the male population of the state. The Convention may perhaps think this too broad. On this subject we have much experience; yet there are respectable citizens who think this extension of suffrage unfavourable to the rights of property. Certainly this would be a fatal objection, if well founded; for any government, however constituted, which does not secure property to its rightful owners, is a bad government. But how is the extension of the right of suffrage unfavourable to property? Will not our laws continue the same? Will not the administration of justice continue the same? And if so, how is private property to suffer? Unless these are changed, and upon them rest the rights and security of property, I am unable to perceive how property is to suffer by the extension of the right of suffrage. But we have abundant experience on this point in other states. Now, sir, in many of the states the right of suffrage has no restriction; every male inhabitant votes. Yet what harm has been done in those states? What evil has resulted to them from this cause? The course of things in this country is for the extenion, and not the restriction of popular rights. I do not know that in Ohio or Pennsylvania, where the right of suffrage is universal, there is not the same security for private rights and private happiness as elsewhere. Every gentleman is aware that the scheme now proposed, is derived from the law calling this Convention, and in the constitution of this body, we have the first fruits of the operation of the principle of extensive suffrage—and will any one say that this example is not one evincing the discretion with which our people exercise this right? In our town meetings too, throughout the state, we have the same principle. In our town elections we have the highest proof of the virtue and intelligence of our people; they assemble in town meetings as a pure democracy, and choose their officers and

local legislatures, if I may so call them; and if there is any part of our public business well done, it is that done in town meetings. Is not this a strong practical lesson of the beneficial operation of this principle? This scheme has been proposed by a majority of the committee; they think it safe and beneficial, founded in just and rational principles, and in the experience of this and neighbouring states. The committee have no attachment, however, to this particular scheme, and are willing to see it amended or altered, if it shall be judged for the interest of the people.

Mr. Ross. Mr. Chairman—In assigning the reasons which influenced the select committee in making the report now under consideration, I shall rely much on the honourable gentlemen, with whom I had the pleasure to be associated on that committee. But, sir, feeling a responsibility in common with the members of that committee, I may perhaps be permitted to state, as concisely as I can, in addition to the views just submitted by the honourable chairman of that committee (Mr. N. Sanford) some of the motives which led to the provisions contained in that report. The subject now submitted, may be viewed as one of deep and interesting importance; inasmuch as it discriminates who among our fellow citizens shall be allowed to exercise the high privilege of designating, by their votes, who shall represent them in their wants and their wishes, in the various and multiplied concerns of legislation and civil government. In every free state, the electors ought to form the basis, the soil from which every thing is to spring, relating to the administration of their political concerns. Otherwise it could not be denominated a government of the people. This results from the immutable principle, that civil government is instituted for the benefit of the governed.—Consequently all, at least, who contribute to the support or defence of the state, have a just claim to exercise the elective privilege, if consistent with the safety and welfare of the citizens. It is immaterial whether that support or defence of the state be by the payment of money, or by personal service, which are precisely one and the same thing, that of taxation. Assuming this, then, as the basis, as being the least objectionable of any other, we are furnished with certain data by which the right to vote can be determined. By entering them in a register, we are able to test the qualification of electors, without resorting to the multiplication of oaths, which under the present constitution had grown into a most corrupting and alarming evil. After the most full and attentive consideration of the subject, the committee were led to the conclusion, that this would be the most simple and practical mode of ascertaining, with certainty, who are entitled to the privilege of electors. At the same time, it gives a liberal extension to that privilege, which, unquestionably, a vast majority of our constituents will demand at our hands, and which we can have no wish to withhold, unless to perpetuate those odious distinctions which have hitherto so long and so justly been complained of.—This is one of the crying evils for which we were sent here to provide a remedy. It is not to be expected, sir, that any general rules can be devised, that will extend to every possible case that it would be desirable to include, nor is it possible to exclude all who might abuse the privilege. Where evils must necessarily exist, the great object of this Convention, I trust, will be to choose the least—to settle down on such general principles as will result in conferring on the people of this state, the greatest possible sum of happiness and prosperity.

That all men are free and equal, according to the usual declarations, applies to them only in a state of nature, and not after the institution of civil government; for then many rights, flowing from a natural equality, are necessarily abridged, with a view to produce the greatest amount of security and happiness to the whole community. On this principle the right of suffrage is extended to white men only. But why, it will probably be asked, are blacks to be excluded? I answer, because they are seldom, if ever, required to share in the common burthens or defence of the state. There are also additional reasons; they are a peculiar people, incapable, in my judgment, of exercising that privilege with any sort of discretion, prudence, or independence. They have no just conceptions of civil liberty. They know not how to appreciate it, and are consequently indifferent to its preservation.

Under such circumstances, it would hardly be compatible with the safety of the state, to entrust such a people with this right. It is not thought advisable to permit aliens to vote, neither would it be safe to extend it to the blacks. We deny to minors this right, and why? Because they are deemed incapable of exercising it discreetly, and therefore not safely, for the good of the whole community.—Even the better part of creation, as my honourable friend from Oneida, (Mr. N. Williams,) stiles them, are not permitted to participate in this right. No sympathies seemed to be awakened in their behalf, nor in behalf of the aborigines, the original and only rightful proprietors of our soil—a people altogether more acute and discerning, and in whose judicious exercise of the right I should repose far more confidence, than in the African race. In nearly all the western and southern states, indeed many others, even in Connecticut, where steady habits and correct principles prevail, the blacks are excluded. And gentlemen have been frequently in the habit of citing the precedents of our sister states for our guide; and would it not be well to listen to the decisive weight of precedents furnished in this case also? It is true that in many of the states the black population is more numerous than in ours. Then, sir, if the exclusion be unjust or improper, that injustice would be of so much greater extent. The truth is, this exclusion invades no inherent rights, nor has it any connection at all with the question of slavery. The practice of every state in the union, is to make such exceptions, limitations, and provisions in relation to the elective privilege, under their respective constitutions, as are deemed to be necessary or consistent with public good—varied in each according to the existing circumstances under which they are made. It must therefore necessarily rest on the ground of expediency. And, sir, I fear that an extension to the blacks would serve to invite that kind of population to this state, an occurrence which I should most sincerely deplore. The petition presented in their behalf, now on your table, in all probability has been instigated by gentlemen of a different colour, who expect to control their votes. But whether this be so or not, next the blacks will claim to be represented by persons of their own colour, in your halls of legislation. And can you consistently refuse them? It would be well to be prepared for such a claim.

On the whole, sir, let your constitution, at a proper period, declare their emancipation; exempt them from military service as the United States government directs, and from other burthens as heretofore; give them the full benefits of protection; and there, in mercy to themselves, and to us, let us stay our hands.

Sir, as to the propriety and justice of extending the elective privilege to all who perform military duty, and render services upon the public highways, I apprehend that it can easily be shewn that public policy, as well as justice, require this extension. In fact, those who have no other qualification to entitle them to vote, contribute more in proportion to their ability to pay, towards the defence and improvement of the state, than the wealthy. They are required to be at the expense of equipping themselves, and to serve three or four days in the year, and for what? Why to be ready to defend the lives and property of the wealthy. And this must be done, however oppressive their poverty, or urgent their business. If not, they must be subject to fine, and to imprisonment too, if they happen to be destitute of money to pay it. In time of war, the burthen is still more unequal; they must be shoved into the front of the battle; no money to procure them a substitute; their families, if they have any, must be left unprotected and unprovided for; themselves exposed to disease, slaughter, and death; and this too, in defence of a country which now denies them the only true badge of freemen, the right of suffrage. Deprive them of this badge, and where is the pledge that ensures their fidelity in defence of the state?

Does not true policy, then, enforce the propriety of strengthening their attachment to their country, by clothing them with the habiliments of freemen? I know, sir, the venerable gentleman from Albany (Gen. S. Van Rensselaer) with whom I had the honour to be associated on that committee, is apprehensive that by extending the right of suffrage to all who perform these services, that we extend it to too many, who will not exercise it with independence and judgment. Sir, many of this description may be found among all orders of men,

rich as well as poor. However trifling he may suppose the burthen imposed on persons living in the cities, to comply with military requisitions, he may be assured, that in the country it amounts to a very serious burthen.

I have a deference and respect for that gentleman's opinions, his virtues, and his philanthropy, to which all bear testimony. And, sir, I am the more surprised that he should be averse to conferring this privilege on men he has once led on to battle, as he himself must have witnessed their privations and their sufferings. In his operations upon the Niagara frontier during the late war, a great part of the forces under his command were composed of men who, with the provisions here reported, would be excluded from the right of suffrage. I have no wish, sir, to endanger the rights of property, by advocating the extension of this privilege. On the contrary, I am anxious those rights should be guaranteed by every necessary precaution. Let them be made amply secure; require, if you please, that persons to be elected to office shall possess a certain amount of freehold estate. At the same time extend the right of suffrage to every citizen who is compelled to bear arms; for remember, that we are not always to be in a state of peace, and let us estimate the rights of the militia accordingly. During the late war, frequent were the calls on the militia, and as often were they promptly obeyed. They subjected themselves to immense sacrifices; exposed themselves to every hardship and danger incident to the vicissitudes of war, for the protection and defence of the state, and for the preservation of that privilege which they now claim a right to enjoy. Let me ask, sir, what would have been the fate of the brave army of Gen. Brown when pent up in Fort Erie, had not the militia fled to their relief, and averted their impending ruin? Enclosed by a superior force of the enemy, whose incessant and destructive fire from his batteries continually thinned their ranks, and wasted away our veteran little army, unable to secure a retreat, and too much weakened to advance. In this perilous crisis, the militia, without waiting to receive orders, but on appealing to their patriotism, instantly hurried to their protection. They crossed the Niagara in opposition to the pressing advice of their disaffected, but more wealthy neighbours; and, under the command of Gen. Porter, they rescued the remains of that army which had survived the glorious conflict at Bridgewater from inevitabledestruction. The militia, on that occasion, achieved what would have given lustre to the best disciplined troops. They met, and drove the enemy from his strong intrenchments; liberated our army, and saved the western part of the state from plunder and conflagration. It has since been well said, in allusion to that event, that the militia of New-Orleans have done much: the militia of other places have done much: but it remained for the militia of Genesee, and the Niagara frontier, to successfully storm and take possession of the enemy's batteries.

Considering, sir, the perilous situation of our country at this momentous period, the general government literally destitute of men and of money, pressed by a veteran foe on every side, a part of the union yielding to the contaminating spirit of disaffection—in this direful dilemma, the nation turned its last hope upon the militia, particularly of New-York. That hope, sir, was not disappointed. The then governor or commander in chief, by his patriotic and unexampled exertions, infused a universal spirit of emulation, and twenty thousand hardy champions of liberty rushed into the field at once from this single state. It was the militia, sir, that snatched the trembling liberties of the nation from the malignant grasp of the enemy. But for them, we might all of us at this moment have been compelled to deplore the loss of that high privilege, the right of suffrage. And what do they now ask? Simply to be allowed to participate with you in the rights of self-government. And shall they be denied? I trust not, sir. If their services are duly appreciated, I indulge the hope that no honourable gentleman of this Convention will resist the justice of their claims.

Gen. S. Van Rensselaer felt called upon, as dissenting from the opinion of the committee, and as particularly pointed at by the gentleman last up, to state his motives for that dissent. He was willing to permit all who contributed in money to the state, or county, or town, who have residence in the towns, or a legal settlement, to vote; but he was not willing to give a wandering population, men who are no where to be found when the enemy, or the tax gatherer,

comes, the same privileges as those who actually contribute to the support and the defence of the government. The gentleman has referred to the services of the militia which I had the honour to command—does the gentleman suppose that that militia was composed of this wandering population? No, sir; they were farmers and farmers' sons. I am not anxious to discuss this subject at large, but beg to submit a substitute for the first clause, which goes as far as I think it safe or proper to go. To extend the right of suffrage beyond this, would, in my judgment, at some future time, when the number of inhabitants in this state not owning land, will be vastly greater than that of the land owners, subject the rights of landed property to imminent danger. Mr. Van Rensselaer then submitted the following substitute:

"Every male citizen, of the age of 21 years, who shall have resided in the state one year, and in the city or county where he may claim to vote six months preceding an election; and within the last two years shall have been assessed and paid a state, county, or town tax, together with the sons of citizens qualified as aforesaid, above the age of 21 years, and not exceeding   years, who may neither have been assessed nor paid any such tax, shall be entitled to vote for governor, lieutenant-governor, senators, members of assembly, and for every other officer to be elected by the people."

Mr. Fairlie felt himself called upon by the unusual and improper reference of the gentleman from Genesee, (Mr. Ross,) to the views of the minority in the select committee, and particularly to those of the honourable gentleman from Albany, (Mr. S. Van Rensselaer) to state, that the gentleman from Albany was not alone in that committee in his opposition to the admission to the right of suffrage of militiamen, and persons working on the roads. He had concurred in that opposition, though he did not mean to be understood as saying, that, after a full discussion of the question, he might not feel himself at liberty to vote for the clause as reported.

Col. Young moved to amend the substitute offered by the gentleman from Albany, by inserting the word "white" before citizens.

Mr. Jay. The chairman of the select committee has given a fair and candid exposition of the reasons that induced them to make the report now under consideration, and of the motives by which they were governed. He has clearly stated why they were desirous of extending the right of suffrage to some who did not at present enjoy it, but he has wholly omitted to explain why they deny it to others who actually possess it. The omission, however, has been supplied by one of his colleagues, who informed us that all who were not white ought to be excluded from political rights, because such persons were incapable of exercising them discreetly, and because they were peculiarly liable to be influenced and corrupted. These reasons, sir, I shall notice presently. When this Convention was first assembled, it was generally understood that provisions would be made to extend the right of suffrage, and some were apprehensive that it might be extended to a degree which they could not approve. But, sir, it was not expected that this right was in any instance to be restricted, much less was it anticipated, or desired, that a single person was to be disfranchised. Why, sir, are these men to be excluded from rights which they possess in common with their countrymen? What crime have they committed for which they are to be punished? Why are they, who were born as free as ourselves, natives of the same country, and deriving from nature and our political institutions, the same rights and privileges which we have, now to be deprived of all those rights, and doomed to remain forever as aliens among us? We are told, in reply, that other states have set us the example. It is true that other states treat this race of men with cruelty and injustice, and that we have hitherto manifested towards them a disposition to be just and liberal. Yet even in Virginia and North-Carolina, free people of colour are permitted to vote, and if I am correctly informed, exercise that privilege. In Pennsylvania, they are much more numerous than they are here, and there they are not disfranchised, nor has any inconvenience been felt from extending to all men the rights which ought to be common to all. In Connecticut, it is true, they have, for the last three years,

adopted a new constitution which prevents people of colour from acquiring the right of suffrage in future, yet even there they have preserved the right to all those who previously possessed it.

Mr. Chairman, I would submit to the consideration of the committee, whether the proposition of the gentleman from Saratoga is consistent with the constitution of the United States. That instrument provides that "citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." No longer ago than last November, the legislature of this state almost unanimously resolved, that "if the provisions contained in any proposed constitution of a new state, deny to any citizens of the existing states the privileges and immunities of citizens of such new state, that such proposed constitution should not be accepted or confirmed; the same in the opinion of this legislature being void by the constitution of the United States." Now, sir, is not the right of suffrage a privilege? And can you deny it to a citizen of Pennsylvania who comes here and complies with your laws, merely because he is not six feet high, or because he is of a dark complexion?

But we are told by one of the select committee, that people of colour are incapable of exercising the right of suffrage. I may have misunderstood that gentleman; but I thought he meant to say, that they laboured under a physical disability. It is true that some philosophers have held that the intellect of a black man, is naturally inferior to that of a white one; but this idea has been so completely refuted, and is now so universally exploded, that I did not expect to have heard of it in an assembly so enlightened as this, nor do I now think it necessary to disprove it. That in general the people of colour are inferior to the whites in knowledge and in industry, I shall not deny. You made them slaves, and nothing is more true than the ancient saying, "The day you make a man a slave takes half his worth away." Unaccustomed to provide for themselves, and habituated to regard labour as an evil, it is no wonder that when set free, they should be improvident and idle, and that their children should be brought up without education, and without prudence or forethought. But will you punish the children for your own crimes; for the injuries which you have inflicted upon their parents? Besides, sir, this state of things is fast passing away. Schools have been opened for them, and it will, I am sure, give pleasure to this committee to know, that in these schools there is discovered a thirst for instruction, and a progress in learning, seldom to be seen in the other schools of the state. They have also churches of their own, and clergymen of their own colour, who conduct their public worship with perfect decency and order, and not without ability.

This state, Mr. Chairman, has taken high ground against slavery, and all its degrading consequences and accompaniments. There are gentlemen on this floor, who, to their immortal honour, have defended the cause of this oppressed people in congress, and I trust they will not now desert them. Adopt the amendment now proposed, and you will hear a shout of triumph and a hiss of scorn from the southern part of the union, which I confess will mortify me—I shall shrink at the sound, because I fear it will be deserved. But it has been said that this measure is necessary to preserve the purity of your elections. I do not deny that necessity has no law, and that self-preservation may justify in states, as well as in individuals, an infringement of the rights of others. Were I a citizen of one of the southern states, I would not (much as I abhor slavery) advise an immediate and universal emancipation. But where is the necessity in the present instance? The whole number of coloured people in the state, whether free or in bondage, amounts to less than a fortieth part of the whole population. When your numbers are to theirs as forty to one, do you still fear them? To assert this, would be to pay them a compliment which, I am sure, you do not think they deserve. But there are a greater number in the city of New-York. How many? Sir, in even that city, the whites are to the blacks as ten to one. And even of the tenth which is composed of the black population, how few are there that are entitled to vote? It has also been said that their numbers are rapidly increasing. The very reverse is the fact. During the last ten years, in which the white population has advanced with astonishing rapidity, the coloured population of the state has been stationary. This fact

appears from the official returns of the last and the preceding census, and completely refutes the arguments which are founded upon this mis-statement. Will you, then, without necessity, and merely to gratify an unreasonable prejudice, stain the constitution you are about to form, with a provision equally odious and unjust, and in direct violation of the principles which you profess, and upon which you intend to form it? I trust, I am sure, you will not.

Gen. Root, after a few introductory remarks, and observations upon the order in which the amendments had been proposed by the honourable gentlemen from Albany and Saratoga, (Messrs. Young and S. Van Rensselaer,) proceeded to explain his views of the social compact.

Sir, said Mr. R. in the formation of a social compact, which generally grows out of exigency, when the people are but a little removed from their barbarous and rude state, they are not particular in enumerating the principles upon which they thus unite; but when they become more enlightened, they will undertake to say who shall belong to their family.

In my judgment, every one who is taken into the bosom of that family, and made to contribute, either in property or personal service, to the benefit of that family, should have a voice in managing its concerns. It cannot be denied, that the preservation of property is a much less consideration, than that of a security in our liberty and independence. Every member of this political family, who is worthy to be one of its members, will prize much higher the freedom of the country, than the preservation of property.

Sir, for the preservation, or protection of property, you require a contribution in property towards the public fund—you do this in the case of an alien, who may hold property and be protected by the laws of your country, in the enjoyment of that property; but he is not allowed to vote. An alien is sometimes permitted, by a particular law to hold property; and if he is an able bodied man, he is required to fight in defence of this country, yet he is not allowed to vote. The reasons are, that notwithstanding he may live among us and enjoy the benefit of our freedom, he may have a partiality for some foreign country; therefore, he is not to partake fully of our privileges till after a certain probationary season. The black population have a right to hold property, and are protected in the enjoyment of it by our laws: but, sir, in case of an invasion or insurrection, neither the alien nor black man is bound to defend your country. They are not called on, because it is supposed there is no reliance to be placed in them, they might desert the standard and join your enemy—they have not any anchorage in your country which the government is willing to trust.

Then under this view of the subject, it appears to me they cannot complain at being excluded from voting, inasmuch as they are not bound to assist in the defence of the country; but have their liberty secured to them. It would be improper that they should come forward and vote for the election of a commander in chief, whom they were not bound to obey. We have been told by the honourable gentleman from Westchester, (Mr. Jay) and shall be again told, that we are about to deprive these people of a franchise, with which they are now vested. Sir, it is impossible to remoddle your constitution without changing the relative rights of your citizens. It is said that these people are now entitled to vote under our constitution, and that it is proposed to deprive them of this privilege—Are there not others who are in a measure disfranchised by the report of this committee, which requires nothing but a residence, and to have paid taxes, to qualify a man to vote for governor and senators?

I am not disposed to follow the gentleman, who has referred us to the resolutions of the legislature for the two years past, instructing our members in congress on the subject of the Missouri question. Whatever our legislature may have done, it is not to affect the operations of this Convention, in deciding upon the great question before us. Their wisdom may be considered as worthy of some consideration, still I flatter myself it will not materially vary the result of this question. It is not necessary that we should enquire whether there is a just cause of alarm, for fear that these blacks will hereafter disturb our political family. At present the number of blacks who are voters is so small, that if they were scattered all over the state, there would not be much danger to be apprehended; but if we may judge of the future by the past, I should sup-

pose there was some cause of alarm—when a few hundred free negroes of the city of New-York, following the train of those who ride in their coaches, and whose shoes and boots they had so often blacked, shall go to the polls of the election, and change the political condition of the whole state. A change in the representation of that city may cause a change in your assembly, by giving a majority to a particular party, which would vary your council of appointment who make the highest officers of your government—Thus would the whole state be controlled by a few hundred of this species of population in the city of New-York.

This is not all, in time of war these people who are not called on to fight your battles, may make the majority of your legislature, which will defeat every measure for the prosecution of that war; so that instead of being an "organized corps" to fight your battles, they may be an "organized corps" to defeat the energies of the state with all its patriotic exertions.

But although he was in favour of retaining some of the principles of the propositions submitted by the honourable gentleman from Albany, yet there were others which he disapproved. He, therefore, proposed to amend it (Mr. Young having withdrawn his motion to insert) in the following manner:—

"But no person shall be allowed to vote for any elective officer in this state, who would not if an able bodied man, and within the proper age prescribed by the laws of the United States, be liable to the performance of militia duty, unless exempted by act of congress, or the laws of this state, on account of some public office, or being employed in some public trust, or particular business, deemed by the legislative authority to be specially beneficial to the United States or this state, or unless he shall have paid within the year next preceding his offering his vote, a fair equivalent in money for his personal services and equipments, to be determined by the legislature, according to the estimated expense in time and equipments, of an ordinary, able bodied and efficient militiaman; *Provided* that any such person, above the age required by law for the performance of militia duty, and who shall have, before arriving at that age, paid such equivalent, or been liable therefor, if an able bodied man, and then resident in this state, may be permitted to vote at any such elections."

Mr. R. thought this provision would meet the views of gentlemen who entertained the same sentiments in relation to the black voters that he did, and at the same time preserve the delicacy of language which is observable in the constitution of the United States, which no where uses the word slave.

Mr. Eastwood made a few remarks against the amendment.

Mr. E. Clarke said he rose with considerable embarrassment, knowing the weight of experience, talent, and elocution opposed to him. I am, said Mr. C. oppposed to my honourable colleague (Mr. Root) on this question, to whose judgment and experience I have generally been willing to pay due deference. I am unwilling to retain the word "*white*," because its detention is repugnant to all the principles and notions of liberty, to which we have heretofore professed to adhere, and to our declaration of independence, which is a concise and just expose of those principles. In that sacred instrument we have recorded the following incontrovertible truths—"*We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.*"

The people of colour are capable of giving their consent, and ever since the formation of your government they have constituted a portion of the people, from whence your legislators have derived "their just powers;" and by retaining that word, you deprive a large and respectable number of the people of this state of privileges and rights which they have enjoyed in common with us, ever since the existence of our government, and to which they are justly entitled. Sir, to this declaration we all profess to be willing to subscribe, yet by retaining this word you violate one of the most important maxims it contains.

It has been appropriately observed by the honourable gentleman from Westchester, (Mr. Jay,) that, by retaining this word, you violate the consti

tution of the United States. Besides the clause quoted by that honourable gentleman, I think there is another upon which it crowds very hard. Free people of colour are included in the number which regulates your representation in congress, and I wish to know how freemen can be represented when they are deprived of the privilege of voting for representatives. The constitution says, "representatives and direct taxes shall be apportioned among the different states, according to the inhabitants thereof, including all free persons," &c. All colours and complexions are here included. It is not free "white" persons. No, sir, our venerable fathers entertained too strong a sense of justice to countenance such an odious distinction.—Now, sir, taking this in connection with the declaration of independence, I think you cannot exclude them without being guilty of a palpable violation of every principle of justice. We are usurping to ourselves a power which we do not possess, and by so doing, deprive them of a privilege to which they are, and always have been, justly entitled—an invaluable right—a right in which we have prided ourselves as constituting our superiority over every other people on earth—a right which they have enjoyed ever since the formation of our government—the right of suffrage. And why do we do this? Instead of visiting the iniquities of these people upon them and their children, we are visiting their misfortunes upon them and their posterity unto the latest generation. It was not expected of us, that in forming a constitution to govern this state, we should so soon have shewn a disposition to adopt plans fraught with usurpation and injustice. Because we have done this people injustice, by enslaving them, and rendering them degraded and miserable, is it right that we should go on and continue to deprive them of their most invaluable rights, and visit upon their children to the latest posterity this deprivation? Is this just? Is it honest? Was it expected by our constituents? Will it not fix a foul stain upon the proceedings of this Convention which time will not efface.

My honourable colleague has told us "that these people are not liable to do military duty, and that as they are not required to contribute to the protection or defence of the state, they are not entitled to an equal participation in the privileges of its citizens." But, sir, whose fault is this? Have they ever refused to do military duty when called upon? It is haughtily asked, who will stand in the ranks, shoulder to shoulder, with a negro? I answer, no one in time of peace; no one when your musters and trainings are looked upon as mere pastimes; no one when your militia will shoulder their muskets and march to their trainings with as much unconcern as they would go to a sumptuous entertainment, or a splendid ball. But, sir, when the hour of danger approaches, your "white" militia are just as willing that the man of colour should be set up as a mark to be shot at by the enemy, as to be set up themselves. In the war of the revolution, these people helped to fight your battles by land and by sea. Some of your states were glad to turn out corps of coloured men, and to stand "shoulder to shoulder" with them. In your late war they contributed largely towards some of your most splendid victories. On Lakes Erie and Champlain, where your fleets triumphed over a foe superior in numbers, and engines of death, they were manned in a large proportion with men of colour. And in this very house, in the fall of 1814, a bill passed receiving the approbation of all the branches of your government, authorizing the governor to accept the services of a corps of 2000 free people of colour. Sir, these were times which tried men's souls. In these times it was no sporting matter to bear arms. These were times when a man who shouldered his musket, did not know but he bared his bosom to receive a death wound from the enemy ere he laid it aside; and in these times these people were found as ready and as willing to volunteer in your service as any other. They were not compelled to go, they were not drafted. No, your pride had placed them beyond your compulsory power. But there was no necessity for its exercise; they were volunteers; yes, sir, volunteers to defend that very country from the inroads and ravages of a ruthless and vindictive foe, which had treated them with insult, degradation, and slavery. Volunteers are the best of soldiers; give me the men, whatever be their complexion, that willingly volunteer, and not those who are compelled to turn out; such men do not fight from necessity, nor from mercenary motives, but from principle. Such men formed the most efficient corps for your country's defence

in the late war; and of such consisted the crews of your squadrons on Erie and Champlain, who largely contributed to the safety and peace of your country, and the renown of her arms. Yet, strange to tell, such are the men whom you seek to degrade and oppress.

There is another consideration which I think important. Our government is a government of the people, supported and upheld by public sentiment; and to support and perpetuate our free institutions, it is our duty and our interest to attach to it all the different classes of the community. Indeed there should be but one class. Then, sir, is it wise, is it prudent, is it consistent with sound policy, to compel a large portion of your people and their posterity, forever to become your enemies, and to view you and your political institutions with distrust, jealousy, and hatred, to the latest posterity; to alienate one portion of the community from the rest, and from their own political institutions? I grant you, sir, that in times of profound peace, their numbers are so small that their resentment could make no serious impression. But, sir, are we sure; can we calculate that we are always to remain in a state of peace? that our tranquillity is never again to be disturbed by invasion or insurrection? And, sir, when that unhappy period arrives, if they, justly incensed by the accumulated wrongs which you heap upon them, should throw their weight in the scale of your enemies, it might, and most assuredly would, be severely felt. Then your gayest and proudest militiamen that now stand in your ranks, would rather be seen "shoulder to shoulder" with a negro, than have him added to the number of his enemies, and meet him in the field of battle.

By retaining the word "white," you impose a distinction impracticable in its operation. Among those who are by way of distinction called whites, and whose legitimate ancestors, as far as we can trace them, have never been slaves, there are many shades of difference in complexion. Then how will you discriminate? and at what point will you limit your distinction? Will you here descend to particulars, or leave that to the legislature? If you leave it to them, you will impose upon them a burden which neither you nor they can bear. You ought not to require of them impossibilities. Men descended from African ancestors, but who have been pretty well white-washed by their commingling with your white population, may escape your scrutiny; while others, whose blood is as pure from any African taint as any member of this Convention, may be called upon to prove his pedigree, or forfeit his right of suffrage, because he happens to have a swarthy complexion. Are you willing, by any act of this Convention, to expose any, even the meanest, of your white citizens, to such an insult? I hope not.

But it is said these people are incapable of exercising the right of suffrage judiciously; that they will become the tools and engines of aristocracy, and set themselves up in market, and give their votes to the highest bidder; that they have no will or judgment of their own, but will follow implicitly the dictates of the purse-proud aristocrats of the day, on whom they depend for bread. This may be true to a certain extent; but, sir, they are not the only ones who abuse this privilege; and if this be a sufficient reason for depriving any of your citizens of their just rights, go on and exclude also the many thousands of white fawning, cringing sycophants, who look up to their more wealthy and more ambitious neighbours for direction at the polls, as they look to them for bread. But although most of this unfortunate class of men may at present be in this dependent state, both in body and mind, yet we ought to remember, that we are making our constitution, not for a day, nor a year, but I hope for many generations; and there is a redeeming spirit in liberty, which I have no doubt will eventually raise these poor, abused, unfortunate people, from their present degraded state, to equal intelligence with their more fortunate and enlightened neighbours.

Sir, there is a day now fixed by law, when slavery must forever cease in this state. Have gentlemen seriously reflected upon the consequences which may result from this event, when they are about to deprive them of every inducement to become respectable members of society, turning them out from the protection, and beyond the control of their masters, and in the mean time ordaining them to be fugitives, vagabonds, and outcasts from society.

Sir, no longer ago than last winter, the legislature of this state almost unanimously resolved, that their senators be instructed, and their representatives requested, to prevent any state from being admitted into this union, which should have incorporated in her constitution any provision denying to the citizens of "each state all the rights, privileges, and immunities of citizens of the several states." These instructions and requests, it is well known, particularly referred to Missouri; and were founded upon a clause in her constitution, interdicting this very class of people "from coming to, or settling in, that state, under any pretext whatsoever." Whether these instructions and requests were proper and expedient at that time or not, is not necessary for me to inquire; and I only refer to them to shew, how tenacious the representatives of the people were, at that time, of even the smallest rights of this portion of their citizens—rights of infinitely less importance to the free people of colour of this state, than those of which you now propose to deprive them. About the same time, my honourable colleague, then a member of the assembly of this state, introduced a bill, declaring that, according to our declaration of independence and form of government, "slavery cannot exist in this state." I shall give no opinion upon the propriety of passing such a law at this day; but I will say, that even the advocating such a humane proposition, gave honourable testimony of the benevolence of his heart. And is it possible, that the representatives of the same people should be found, in a few short months afterwards, entertaining a proposition, which virtually and practically declares, that freedom, that liberty cannot exist in this state; and this proposition receiving support from the same individual who last winter was the champion of African emancipation.

Sir, I well know that this subject is attended with embarrassment and difficulty, in whatever way it may be presented. I lament as much as any gentleman, that we have this species of population among us. But we have them here without any fault of theirs. They were brought here and enslaved by the arm of violence and oppression. We have heaped upon them every indignity, every injustice; and in restoring them at this late day, (as far as is practicable) to their natural rights and privileges, we make but a very partial atonement for the many wrongs which we have heaped upon them; and in the solemn work before us, as far as it related to these people, I would do them justice, and leave the consequences to the righteous disposal of an all-wise and merciful Providence.

The honourable gentleman from Genesee (Mr. Ross) has said that they were a *peculiar* people. We were told the other day that the people of Connecticut were a *peculiar* people. Indeed this is a *peculiarly* happy mode of evading the force of an argument. I admit that the blacks are a *peculiarly* unfortunate people, and I wish that such inducements may be held out, as shall induce them to become a sober and industrious class of the community, and raise them to the high standard of independent electors.

Col. Young expressed his intention to vote against the amendment proposed by the gentleman from Albany (Mr. Van Rensselaer) on the express ground that it did not contain the limitation of *white*. He should use no circumlocution nor disguise. He was willing to express his opinion openly and fully, and to record his name in the journals of the Convention, and thereby transmit it to posterity. He was disposed to discharge the duty which he owed to the people without fear or favour.

The gentleman who had just sat down had adverted to the declaration of independence to prove that the blacks are possessed of "certain unalienable rights." But is the right of voting a natural right? If so, our laws are oppressive and unjust. A natural right is one that is born with us. No man is born twenty-one years old, and of course all restraint upon the natural right of voting, during the period of nonage, is usurpation and tyranny. This confusion arises from mixing natural with acquired rights. The right of voting is adventitious. It is resorted to only as a means of securing our natural rights.

In forming a constitution, we should have reference to the feelings, habits, and modes of thinking of the people. The gentleman last up has alluded to the importance of regarding public sentiment. And what is the public sentiment in relation to this subject? Are the negroes permitted to a participation in social intercourse with the whites! Are they elevated to public office! No,

sir—public sentiment forbids it. This they know; and hence they are prepared to sell their votes to the highest bidder. In this manner you introduce corruption into the very vitals of the government.

A few years ago a law was made requiring the clerks of the respective counties to make out a list of jurymen. Was a negro ever returned upon that list? If he were, no jury would sit with him. Was a constable ever known to summon a negro as a juror, even before a justice of the peace in a matter of five dollars amount? Never,—but gentlemen who would shrink from such an association, would now propose to associate with him in the important act of electing a governor of the state.

This distinction of colour is well understood. It is unnecessary to disguise it, and we ought to shape our constitution so as to meet the public sentiment. If that sentiment should alter—if the time should ever arrive when the African shall be raised to the level of the white man—when the distinctions that now prevail shall be done away—when the colours shall intermarry—when negroes shall be invited to your tables—to sit in your pew, or ride in your coach, it may then be proper to institute a new Convention, and remodel the constitution so as to conform to that state of society.

It has been urged, however, that it is not their fault that they do not serve in the militia. Granted—but state authority cannot compel them to serve. That subject is left to the general government, which directs the enrolment of *white* citizens only. *Expressio unius, est exclusio alterius.*

An argument has been raised that the proposition in the report of the committee would deprive them of *vested rights.*

It has been correctly remarked in reply, by the gentleman from Delaware, (Mr. Root,) that you cannot vary or extend the rights of one class, without infringing upon those of another. Formerly, no residence was required for a voter. Now it is proposed to require the residence of a year; and perhaps by that provision the rights of four or five hundred emigrants may be affected, and by this, we may possibly exclude four or five hundred black freeholders. The argument in the one case will apply to the other.

If we look back to the time when our constitution was formed, we find that there were then few or no free blacks in the state. The present state of things was not contemplated, and hence no provision was made against it. The same was the case in Connecticut. In their recent constitution they have provided for the exclusion of the blacks.

If you admit the negroes, why exclude the aborigines? They have never been enslaved. They were born, free as the air they breathe. That want of self-respect which characterises the negroes, cannot be imputed to them.

It is said that the negroes fought our battles. So did aliens—the French. But were the French on that account entitled to vote at our elections? No, sir. It is a question of expediency; and believing as I do, that the blacks would abuse the privilege if granted, I am disposed to withhold it.

Mr. Radcliff also opposed the amendment. He considered the principle of exclusion to be derived, not from the distinction of colour—but resorted to as a rule of designation between those who understand the worth of that privilege, and those who are degraded, dependant, and unfit to exercise it.

Mr. Dodge proposed to divide the question into three distinct parts.

Mr. King deemed that course out of order, until the amendment was acted on.

Mr. Sheldon was of the same opinion; and upon a suggestion that the principle of the amendment might be more correctly decided in a different shape, Mr. S. Van Rensselaer consented to withdraw it.

The question then arising upon the first section as originally reported by the committee,

Mr. Jay moved that the word *white* be stricken out.

Mr. Kent supported the motion of Mr. Jay. He was disposed, however, to annex such qualifications and conditions as should prevent them from coming in bodies from other states to vote at elections.

We did not come to this Convention to *disfranchise* any portion of the community, or to take away their rights. Suppose a negro owning a freehold and

entitled to vote in Vermont, removes to this state. Can we constitutionally exclude him from enjoying that privilege? The constitution of the United States provides that " the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states;" and it deserved consideration whether such exclusion would not be opposed to the constitution of the United States.

There was much difficulty in the practical operation of such a principle. What shall be the criterion in deciding upon the different shades of colour? The Hindoo and Chinese are called yellow—the Indian *red*! Shall these be excluded should they come to reside among us? Great efforts were now making in the Christian world to enlighten and improve their condition, and he thought it inexpedient to erect a barrier that should exclude them forever from the enjoyment of this important right.

Col. Young replied, and enforced the reasons which he had previously urged against the amendment that had been withdrawn.

It had been objected that this measure would be a hardship upon the blacks. But it had been recently and soberly done in the land of " steady habits." And are we more wise, more sober, more correct, than they? We ought to make a constitution adapted to *our* habits, manners, and state of society. Metaphysical refinements and abstract speculations are of little use in framing a constitution. No white man will stand shoulder to shoulder with a negro in the train band or jury-room. He will not invite him to a seat at his table, nor in his pew in the church. And yet he must be placed on a footing of equality in the right of voting, and on no other occasion whatever, either civil or social.

It had been said that there was no criterion to determine questions of fact in relation to the various shades of colour. That will be left for the legislature to define and settle. And although there may be some difficulty in individual cases, yet that circumstance furnishes no argument against the establishment of the principle.

The minds of the blacks are not competent to vote. They are too much degraded to estimate the value, or exercise with fidelity and discretion that important right. It would be unsafe in their hands. Their vote would be at the call of the richest purchaser. If this class of people should hereafter arrive at such a degree of intelligence and virtue, as to inspire confidence, then it will be proper to confer this privilege upon them. At present emancipate and protect them; but withhold that privilege which they will inevitably abuse. Look to your jails and penitentiaries. By whom are they filled? By the very race, whom it is now proposed to cloth with the power of deciding upon your political rights.

If there is that natural, inherent right to vote, which some gentlemen have urged, it ought to be further extended. In New-Jersey, females were formerly allowed to vote; and on that principle, you must admit *negresses* as well as *negroes* to participate in the right of suffrage. Minors, too, and aliens must no longer be excluded, but the " era of good feelings" be commenced in earnest.

Mr. Radcliff observed in reply to the argument of the gentleman from Albany, (Mr. Kent,) that if the negro freeholder, removing to this state from Vermont, had a constitutional right to vote here, it follows that it would be equally unconstitutional to annex such qualification to their coming from other states, as that gentleman had proposed. He remarked that a learned and pious profession were excluded from office. But were it otherwise in Vermont, and a clergyman should come hither from that state, he would, upon the principle assumed by that gentleman, be eligible to office, in defiance of the constitution. The constitution of the United States applied only to *civil*, not to *political* rights. The latter are necessarily reserved to the several states.

Mr. King said he was fully aware of the delicacy of this question, and of the difficulties with which every step of it must be accompanied; and he did not now mean to enter into the consideration of it. It is in relation to one idea only that I wish to confine my remarks.

The constitution of the United States is beyond the control of any act of any of the states. It is a compact, to which the people of this state, in common with those of other states, are parties, and cannot recede from it without the

consent of all. With this understanding, what, let me ask, is the meaning of the provision quoted by the gentleman from Albany, (Mr. Kent.) Take the fact that a citizen of colour, entitled to all the privileges of a citizen, comes here. He purchases a freehold ; can you deny him the rights of an elector, incident to his freehold ? He is entitled to vote, because, like any other citizen, he is a freeholder ; and every freeholder your laws entitle to vote. He comes here, he purchases property, he pays you taxes, conforms to your laws ; how can you then, under the article of the constitution of the United States which has been read, exclude him. The gentleman from New-York(Mr.Radcliff) thinks, that the meaning of this provision in the United States' constitution extends only to *civil* rights : such is not the text, it is to all rights. This seems to me to lay an insuperable barrier in our way. But I am, at the same time free to confess, that I am fully alive to the difficulties of this question, though I do not feel that they do now press upon us. I am not sure how a black, unless born free, may become a citizen ; a man born a slave cannot be a citizen : a red man cannot be a citizen ; they cannot even be naturalized, for naturalization can only be effected under the laws of the United States, which limit to the whites. The subject is evidently full of difficulties, though, as I before said, they are not now pressing. But the period is not distant when they must be. As certainly as the children of any white man are citizens, so certainly the children of the black men are citizens ; and they, may in time, raise up a progeny, which will be disastrous to the other races of this country. I will not trouble the Convention further ; but I thought it due to the occasion to express my opinion of the constitutional barriers which interpose, to prevent our retaining the word " white" in the clause.

Mr. Young understood the language of the constitution to mean that a black man or a white man, coming into this state, should be entitled to all the privileges and immunities to which black men or white men are in this state entitled. A clergymen coming into this from another state, would be entitled to all the privileges and immunities to which a clergyman is here entitled. Of course if this construction be correct, the constitution of the United State's does not bear upon this question.

Mr. Root expressed a similar opinion. He remarked, that if it were otherwise, a man going from one state where a freehold was not required as a qualification for a voter, into another state where a freehold was required, might still claim the right of voting. This Convention may provide that no man shall vote who has not a freehold of 10,000*l.*—and no man coming from another state where it was not required, could be authorized to vote without such freehold.

Mr. R., thought the amendment which he had previously offered, but which had been thought to be out of order, and therefore waived, might avoid some of the difficulties that were feared, and he therefore renewed his motion to strike out the word *white* for the purpose of inserting it.

On motion of Mr. Cramer, the committee then rose, reported progress, and obtained leave to sit again.

Mr. Ross moved that the Convention hereafter meet at 9 o'clock, A. M. Lost.

Mr. Young then moved that the Convention hereafter hold two sessions a day, to meet at 9 o'clock in the morning, and at some convenient hour in the afternoon.

Before the motion was put, the Convention, on motion of Mr. Van Vechten, adjourned.

THURSDAY, SEPTEMBER 20, 1821.

Prayer by the Rev. Mr. De Witt. The minutes of yesterday were read and approved. The President excused himself, and requested Chief Justice Spencer to take the chair in his absence.

THE ELECTIVE FRANCHISE.

On motion of MR. N. SANFORD the Convention then resolved itself into a committee of the whole on the report of the committee on the right of suffrage. Mr. N. Williams in the chair.

MR. VAN VECHTEN observed, that the question before the committee was of importance, and one on which he should be happy to see a unanimous vote. It had been said that the people looked for an extension of the right of suffrage, but he had not heard it suggested that they desired the disfranchisement of any class of electors.—The amendment reported by the select committee contemplated to deprive electors of colour of a right which they have enjoyed since the adoption of the constitution. He asked why this should be done? Those electors are freemen, and have been recognized as citizens of the state nearly half a century; have under the sanction of our constitution and laws duly acquired the legal qualifications of electors. Have they done any thing to forfeit their right of suffrage? This has not been shewn. It was indeed urged that they are a degraded people, wanting intelligence, integrity, and independence, who sell their votes to the highest bidder, and that many commit perjury to make themselves voters. But what evidence have the committee to fix those imputations on that class of electors, which does not fix the same imputation, on as numerous a class of white electors? Is perjury, moral degradation, ignorance, and want of independence confined to the electors of colour? Have they the capacity to acquire and take care of the property which is necessary to constitute them electors, and are they incapable of enjoying the privileges which the acquisition of property entitles them to? Is it competent for us to prescribe what moral and intellectual qualifications will constitute an honest and independent elector? I presume not, (said Mr. Van Vechten,) nor has the select committee attempted to do so, except by excluding persons duly convicted of infamous crimes.—It seems that some gentlemen entertain doubts whether any of our people of colour are in a legal sense citizens, but those doubts were in his opinion unfounded.—We are precluded from denying their citizenship, by our uniform recognition for more than forty years—nay some of them were citizens when this state came into political existence—partook in our struggle for freedom and independence, and were incorporated into the body politic at its creation. As to their degradation, that had been produced by the injustice of white men, and it does not become those who have acted so unjustly towards them, to urge the result of that injustice as a reason for perpetuating their degradation.—The period has elapsed when they were considered and treated as the lawful property of their masters. Our legislature has duly recognized their unalienable right to freedom as rational and accountable beings. This recognition, and the provision made by law for the gradual amelioration of their condition, by necessary implication, admit their title to the native and acquired rights of citizenship. Indeed the report of the select committee considers them to be citizens—why else are the words *white citizens* used in the report? If there are no citizens of colour the term *white* by way of distinction is unmeaning. Again, the law under which the members of this Convention were elected, expressly gives the right of voting not only for calling the Convention, and at the election of its members, but on the amendments which the Convention may propose to the constitution. Are not these unequivocal and conclusive concessions of their citizenship? But it is said that they are by law exempted from sharing the public burthens of militia service, and serving as jurors, because public sentiment is against an intermixture with them in those services. Mr. Van Vechten remarked that their exemption from militia duty, was the gratuitous act of the government of the United States, in which the free people of colour were not consulted. With respect to serving on juries there is no legal exemption in favour of the people of colour who have the qualifications prescribed by law for jurors, It is true that in compliance with the prejudices of the community they are practically excluded from jury service, and probably their exemption from militia duty was induced by the same motive. But is this a just ground for defranchising them? Are they not

liable, whenever the government shall see fit to require them, to render the same services that white citizens are enjoined to perform? Are they not taxable, and do not many of them pay their proportion of taxes in common with white citizens? This cannot be denied. How then can we in framing a permanent form of government, justly deny them the rights of free citizens, on account of their present exemption by law from militia duty, and their practical exemption from serving as jurors? Do our prejudices against their colour destroy their rights as citizens? Whence do those prejudices proceed? Are they founded in impartial reason, or in the benevolent principles of our holy religion? Nay, are they indulged in cases where the services of men of colour are desirable? Do we not daily see them working side by side with white citizens on our farms, and on our public highways? Is it more derogatory to a white citizen to stand by the side of a citizen of colour in the ranks of the militia, than in repairing a highway, or in labouring on a farm? Again, are not people of colour permitted to participate in our most solemn religious exercises—to set down with us at the same table to commemorate the dying love of the Saviour of sinners? This will not be denied by any one who has been in the habit of attending those exercises, and those religious solemnities—And what is the conclusion to which this fact directs us? Is it not that people of colour are our fellow candidates for immortality, and that the same path to future happiness is appointed for them and us—and that in the final judgment the artificial distinction of colour will not be regarded.—How then can that distinction justify us in taking from them any of the common rights which every other free citizen enjoys?

There is another, and to my mind, an insuperable objection, said Mr. V. V., to the exclusion of free citizens of color from the right of suffrage, arising from the provision in the constitution of the United States, "that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." The effect of this provision is, to secure to the citizens of the other states, when they come to reside here, equal privileges and immunities with our native citizens. Suppose, then, that a free citizen of colour should remove from the state of Connecticut into this state, could we deny him the right of suffrage when he obtained the legal qualification of an elector? Is not the constitution of the United States paramount to ours on the subject? and if it is, will it be wise or fit to incorporate an amendment in our constitution, by which we deny to our own citizens of colour, a privilege which we cannot withhold from the same description of citizens of other states, when they migrate into this state.

It has been stated by the gentleman from Saratoga, (Mr. Young) that by the constitution of Connecticut, which has been recently adopted, the right of suffrage is confined to white male citizens. But on looking into the constitution it will be seen that the first section relative to the qualifications of electors, expressly saves and confirms the right of suffrage to all who had been or should be made freemen of that state before the ratification of the constitution. It will not be denied that citizenship was necessary to enable any person to become a freeman in Connecticut, nor can it be disputed that there are and have long been freemen of colour in that state. We have therefore the authority of the framers of the constitution of Connecticut against the principle of disfranchising our present electors of colour.

The gentleman from Saratoga, as well as the gentleman from New-York, (Mr. Radcliff) contend that the provision in the constitution of the United States which has been quoted, relates to civil rights, and not to political privileges. On what is the distinction founded? Is not the language of the constitution "all privileges and immunities" broad enough to comprehend both civil rights, and political privileges? Are there any qualifying words to support the distinction? Is not the right of suffrage admitted on all sides to be an important privilege? Surely the gentleman's distinction is not only unfounded, but inconsistent with the clear and unequivocal language of the constitution, as well as with the obvious policy which induced to the provision in question in its broadest sense.

But in order to repel this argument, and to sustain their distinction, the gentlemen have put the case of a clergyman from Vermont, (where the clergy are not excluded from a seat in the legislature) coming to reside in this state, and it has been asked whether the prohibition in our constitution relative to the clergy, would not exclude him here? To this Mr. V. V. said he found no difficulty in giving a satisfactory answer. The privilege of citizenship has no connexion with the clerical office. A clergyman may exercise all the functions appertaining to his office in this state without being a citizen; but citizenship is necessary to give him a political relation to the government, and that without reference to his clerical office. Wherefore when a citizen from Vermont, or any other state, who is a clergyman, comes to reside amongst us, he is entitled to all the privileges and immunities of citizenship, independent of his office, and as to that he must be content to stand upon the same footing with his clerical brethern here.

Mr. V. V. concluded by repeating that he had understood that it was expected by a considerable portion of the people of this state, that the right of suffrage would be extended, but he had not heard that it was expected or desired (except by some of the citizens of New-York) that any of the present electors of this state should be disfranchised. He should therefore vote for striking out the word *white* in the amendment before the committee, in order to reserve inviolate the present constitutional rights of all the electors.

Chief Justice Spencer said, it was the duty of every man to contribute his aid in arriving at a just result in this important question. He thought he might say he had not wasted much of the time of this Convention. The subject was a momentous one—not merely the proposition before the committee, but the subject matter of it; and certainly he could not justify himself in remaining silent on this important question. He should lay it down as a fundamental maxim, that in proceeding to amend the constitution, this Convention had an unquestionable right to protect and guard the rights of the majority of the community, although it may seemingly invade the rights of others; that the community has a right to secure its own happiness and prosperity, and that we are authorized to adopt all means that shall conduce to that end. If we find existing in this community any particular class of people, who cannot with propriety and safety exercise and enjoy certain privileges, we have a right to abridge them by placing them in the hands of the majority. We have in our constitution determined that no man under twenty-one years shall exercise the right of suffrage, upon the presumption that they do not possess mature understandings, and therefore have not a right to enjoy this privilege. Has the correctness of this principle ever been doubted? He believed not, although many arrive at maturity of understanding, and are ornaments of society, before they reach that age. It is necessary in establishing laws, to have general rules. He therefore had no hesitation to say, that with regard to the blacks, whatever we have to accuse ourselves of, from our own fault, or the fault of our ancestors, we have the unquestionable right, if we think the exercise of this privilege by them will contravene the public good; we have a right to say they shall not enjoy it. This is consistent with the feelings of every man. Sir, difficulties have been urged, and it has been supposed by some gentlemen, that it is an infringement of the constitution of the United States, which says "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." Now, sir, said Mr. Spencer, I have two answers to this: First, If by adopting this principle we shall not be able to exclude men of colour from coming from states, where they enjoy that privilege, the committee know that any thing we may do, inconsistent with the constitution of the United States, would be ineffectual; if it be competent for us to do so, it would be inoperative. This is one answer. We therfore need not be deterred on that ground. I go farther; and must be permitted, with great deference to those distingushed gentlemen who are opposed to me on this subject, to express my own views of the construction of that article. My own opinion is, that this clause regards mere personal rights. It was intended by the constitution to admit persons of other states to purchase property, and enjoy all the personal rights, as in the states whence they came. Let us look at it in relation to the

constitutions of the several states. We have declared that a person to be eligible to the office of governor must have been a resident of this state a certain number of years, before he is qualified. Now, I ask, whether an emigrant from the state of Vermont would contend, that he was eligible to that office, in the same manner as if he had always resided in this state? A residence of six months is required to entitle a person to vote; but a person coming from Vermont, upon the principle here contended for, would say that he had a right to vote, because he had been enrolled in the militia, without reference to the question how long he had resided in the state. I think it was stated by some gentleman in the debate, that a minister of the gospel, who had been licensed in another state, in which there were no such restrictions, would be eligible to a seat in our legislature. An honourable member has said, that he would have the same rights and privileges as a minister of the gospel, in this state. On the same principle, a person of colour coming from another state, would have the privileges as one of the same class here. He should forbear to enlarge upon this part of the subject; but he did hope that gentlemen would concur with him in believing that this clause in the constitution regarded personal rights, and no other.

In arranging its municipal affairs, any government may adopt such regulations as it may think fit. A citizen had no more right to claim to be an elector, than to be elected.—The regulation of the right of voting is an arrangement for the public good; and upon the principal question, if we would conscientiously decide, he believed we should say, that persons of colour do not possess the requisite qualifications for exercising this privilege with discretion. They are a degraded race—it is in part our fault. It had been considered since his day by good and pious individuals, that slavery was lawful—that it was justified by scripture. That opinion has changed—the contrary is believed by all classes of people; and we ought not to deprive them of rights, if by permitting them to enjoy those rights, we do not injure ourselves. Provision has been made in this state for the abolition of their bondage; but in other states slavery exists. —Gradual emancipations may take place; and the truth is not to be disguised, that slaves, thus emancipated, are flocking into this state, and particularly into the metropolis. This consideration ought to arrest the attention of this committee.

He did verily believe, that this description of persons lacked intelligence. It was not owing to their nature altogether, but partly to the manner in which they had been brought up, that they were not capable of judging discreetly in matters of government. Though he should vote against this motion, yet he must connect it with other propositions reported by the committee. He admitted that we have a right to do so for our own safety and security. It has been said by some gentlemen, that by their enjoying these privileges, others were to be abridged—this is not the test; and yet with regard to the report of this committee, they admit a large number of persons to vote, merely because they contribute to the support of the government by their personal services. On this subject how stands our constitution now, with regard to the most numerous branch of the legislature? [Here Mr. Spencer read the clause of the constitution, regulating the votes for members of assembly.] The first inquiry will now be, how many persons will be admitted to the right of suffrage, who do not at present enjoy it, under the existing constitution. The second, whether extending this right in so great a degree, as is proposed, would be compatible with the interests of this state. The report says, that all white male citizens, who within the year immediately preceding the election, have worked on the highways, have been enrolled in the militia, &c. shall be allowed to vote. This will be on the ground of their contributing to the public fund.

Let me ask, said Mr. S. to whom this right will be extended? It will principally be extended to single persons, who have no families, nor permanent residence; to those who work in your factories, and are employed by wealthy individuals, in the capacity of labourers. Now, I hold, and I do it with all deference to the opinions of others—for I do not mean to charge any thing upon this committee—but I do hold, that it will be one of the most aristocratic acts that was ever witnessed in this community—under the pretence of giving the right

to them, we in fact give it to those who employ, clothe, and feed them. I appeal to this Convention, whether they do not believe, that a man who employs twenty, thirty, or fifty of these persons, if, on the approach of an election, he tells them that he wishes them to vote for this or that candidate, whether they will not feel themselves bound to comply with his wishes. That man who holds in his hands the subsistence of another, will always be able to control his will. Such a person will forever be the creature of the one who feeds, shelters, clothes, and protects him. This class of persons, would be as subservient to the will of their employers, as persons of colour. In truth, it would seem to me, that under the notion that there is a call for extending the right of suffrage, this report goes to the most extravagant length.

He said he would explain what he believed to be the origin of this sentiment in favour of extending the elective franchise. The western part of this state has increased with an almost unexampled rapidity, with a virtuous and intelligent people—I speak of those who hold lands by virtue of contracts. They have gone on improving their estates, and paying as far as they could; but in very few cases have they completed their payments, and merely for the want of a form of a deed, they have been excluded from the right of voting. A short time since, attempts had been made in the legislature to invest them with the privilege of voting, as being equitable freeholders, but the attempt did not succeed; and their condition certainly does appear to call for some relief.

I have believed, and do still believe, said Mr. S. that we are called on to extend the right of suffrage, as far as the interests of the community will permit; but I do think we cannot contemplate carrying it to the full extent recommended in the report, without knowing that we are not giving it to those people who will nominally enjoy the right, but to those who feed and clothe them. I shall vote against striking out the word white, on the ground that it is necessary for securing our own happiness. I cannot say I would deprive those people, who have acquired property, of the privilege of voting; but I cannot consent to extend it to others, in whose hands it will be as much abused as by these coloured people. I am willing to extend the right of suffrage as far as my conscience will admit; but I never can agree to extend it so far, as to deprive the agricultural interests of this state of the rights which they ought to enjoy. I never can consent to extend this right, and make an aristocracy by giving the man who has the longest purse, the power to control the most votes.

Gen. Tallmadge rose merely to state a fact. He had made examination, and found that in a warmly contested election about two years ago, there were but about one hundred blacks who voted at the polls in the city of New-York; and in the contested election last spring, there were but one hundred and sixty-three. He submitted it therefore, to the consideration of the committee, whether the evil complained of was of a magnitude to require the disfranchisement of this unfortunate race.

Col. Young observed, in relation to the constitutional question that had been raised, that it had been solemnly adjudged by the honourable gentleman from Albany, (Mr. Kent,) then Chief Justice, in the case of Livingston *vs.* Van Ingen and others, *9th Johnson*, 577, that "the provision that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states, means only that citizens of other states shall have equal rights with our own citizens, and not that they shall have different or greater rights." This was the construction which he had yesterday given it, and which entirely withdrew it from the objections that had been raised.

Mr. Radcliff maintained the position which he yesterday assumed, that the constitution of the United States alluded to *civil*, and not to *political* rights. He referred to contemporaneous and subsequent constructions of that instrument. The constitution of South-Carolina provides that all white inhabitants, and no other shall be allowed to vote. This constitution was made only two years after the formation of the former, and no such objection was raised, although some of those who made it were members of the United States' Convention. The constitution of Delaware was formed soon after, and that of Connecticut more recently—both containing a similar provision. These were old states, and parties in the formation of the federal compact.

The constitutions of Kentucky, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, and Missouri, all new states, contain similar provisions. These having been formed since the original association, were required to submit their respective constitutions to congress for their approbation, as preliminary to their admission into the political family. They did so—and this question has therefore been decided by congress no less than eight times without a single objection ever having been raised against the unconstitutionality of such a provision. The Missouri question was of a political nature, and altogether different from the present.

Mr. R. further illustrated the arguments that had been offered in support of the report of the committee, and answered the objections that had been raised. In reply to the remark, that whites were often as profligate as the blacks, he admitted it; but the same could not be said of them as a class: and if gentlemen could draw a line of distinction that should divide the profligate from the virtuous, he would cheerfully give it his support without reference to colour. He contended that it would be conferring no benefit upon the blacks to allow them to vote. It only led to scenes of dissipation and expense. The principle of extension, as reported by the committee, would give us 2,500 negro votes in the city of New-York—and he hoped that gentlemen from the country would not, merely because they felt no pressure from the evil, let loose upon that city a host of voters that might give law to the whites, and in the consequences affect the remotest corners of the state.

Mr. Livingston. The Convention, sir, have arrived at that part of their business which is the most interesting to the public at large. The questions relating to the legislative and executive branches are less important, because they are at all times in the hands of the people, who can dispose of them at their pleasure. But we have now come back to the right of suffrage—a right which comes home to the business and bosom of every man.

It may be expedient to review our constitutional history. When these states separated from the mother country, and formed constitutions of government, they declared that all men were free and equal; and yet in the next breath they gave a practical refutation of the doctrine they had advanced, by depriving their citizens of equal rights, in granting privileges to the rich which were denied to the poor. And why did they exclude the latter from the right of suffrage? Public policy required it. The wealth of this state was comparatively in the hands of a few individuals. Four or five families could almost control the wealth of the state, and it was necessary to conciliate the rich to avail themselves of their influence and wealth. What was then the situation of the people of colour? They were slaves. A free negro was a phenomenon in the state. They were recognized only as property. Since that time various acts have been passed ameliorating their condition—providing for their gradual emancipation—and prohibiting their exportation to foreign states as slaves. But after having thus provided for their emancipation, and welfare, it behoves us to have regard to the safety of ourselves. Grant them emancipation. Grant them the protection of your laws, and the enjoyment of their religion. But if they are dangerous to your political institutions, put not a weapon into their hands to destroy you. It is indeed painful to review their condition. But look at that people, and ask your consciences if they are competent to vote. Ask yourselves honestly, whether they have intelligence to discern, or purity of principle to exercise, with safety, that important right. Look at their memorial on your table. Out of about fifty petitioners, more than twenty could not even write their names—and those petitioners were doubtless of the most respectable of the colour. Such persons must always be subject to the influence of the designing; and when they approach the ballot boxes, they are too ignorant to know whether their vote is given to elevate another to office, or to hang themselves upon the gallows.

It is said, indeed, that the danger consists only in the city of New-York. And is not that city entitled to our protection? A city which embraces one-tenth of the population, and two-thirds of the wealth of the state? a city that is your boast, and the sinew of your prosperity, and which, if it takes a wrong direction, jeopardizes the dearest interests of the state. Sir, I remember that in

1801, the political complexion of our national government depended upon, and was changed by, the vote of a single ward in the city of New-York.

My honourable colleague has told you that at a recent election, there were but 163 black votes given in that city. I believe he has been misinformed. But whatever may have been the number *admitted*, there were more than 500 that *applied* for admission; and if they are not excluded, the principle of the report will let in upon that devoted city a horde of voters whom I will forbear to describe. Description could not do justice to the picture—but I ask this Convention what intercourse they, as individuals, would hold with them? Aside from all considerations of colour, what has been their conduct that should entitle them to your hospitalities and association? What privilege have you conferred—what protection have you granted them, that has not been abused? I refer to documents that can give the answer. Look into your calendars. Survey your prisons—your alms-houses—your bridewells and your penitentiaries, and what a darkening host meets your eye! More than one-third of the convicts and felons which those walls enclose, are of your sable population. Sir, I wish to excite no hostile feelings towards them. I pity them from my heart. I lament their condition. I am disposed to amend it; but I cannot consent to invest them with a power that may be wielded to the destruction of all we hold dear.

We have been told by the honourable gentleman from Albany, (Mr. Van Vechten) that we were not sent here to deprive any portion of the community of their vested rights. Sir, the people are here themselves. They are present in their delegates. No restriction limits our proceedings. What are these *vested* rights? Sir, we are standing upon the foundations of society. The elements of government are scattered around us. All rights are buried; and from the shoots that spring from their grave, we are to weave a bower that shall overshadow and protect our liberties. Our proceedings will pass in review before that power that elected us; and it will be for the people to decide whether the blacks are elevated upon a ground which we cannot reach. Sir, we, all of us, entered into the government subject to the implied condition that our constitution was liable to revision and alteration; and that the blacks, in this particular, have vested rights exempt from the power of abridgment or alteration, which the whites have not, I have yet to learn.

But, sir, look to the savages that inhabit your western counties. You have governed them by your laws. You have legislated over them. You have taken their property into your keeping. But where have you allowed them to vote? And why will you debar them a privilege to confer it upon a race infinitely beneath them in all those properties and attributes that give worth and dignity to man?

But, sir, we are presented with a constitutional impediment. I shall not stop to discuss the technical construction, it may bear; but I hold that it is incompetent for the general government to interpose in the regulation of our municipal affairs It is a privilege incident to that state sovereignty which has been reserved. Has congress the right to dictate to the state of New-York what shall be the qualifications of her voters? It cannot be pretended. Suppose the legislature of this state should enact, as they have an undoubted right to do, that no black man shall be admitted as a witness; and suppose a suitor in a court of justice should demand that a black man, who had been imported from a neighbouring state where no such law existed, should be admitted to testify in defiance of your law, would his demand avail him? And yet if the construction contended for be correct, that suitor might rest himself upon the constitution of the general government, and give your law to the winds. No sir, the constitution of the United States does not—nor was it ever intended that it should, interfere with the local regulations of the several states. Such a construction would annihilate our sovereignty and prostrate our independence forever.

Mr. Jay in reply—Mr. Chairman—I am sensible that little remains to be gleaned, in a field which has been so well reaped. Still, there are some arguments which deserve a reply, and some points which have been discussed, upon which a few rays of light may perhaps yet be thrown. It has been repeated-

ly urged, that since the whole body of the clergy, have, from reasons of political convenience, been disfranchised, we may with equal justice, and for the same reasons, disfranchise the people of colour. But is it true that the clergy are disfranchised? or that their case is similar to that of the people whose rights we are now considering? The clergy have a right to vote, and do vote; they have a right to be represented, and they are represented. The only restriction put upon them, is, that while they exercise the pastoral office, they shall exercise no other. If this be disfranchisement, the chancellor and chief justice of the state are equally disfranchised. Neither of those high officers can be a representative in the legislature unless he resigns his judicial office. But if he resigns it, he immediately becomes eligible; so a clergyman, while he exercises his pastoral office, may not be elected, but if he resigns that office and ceases to be a minister of the gospel, he may, for any thing that I know to the contrary, accept any other appointment which the people shall please to bestow upon him. History proves, that the interference of the clergy in secular concerns, has usually been prejudicial to the public: that when they mingled in the heats and asperities of political parties, they impaired their own dignity and usefulness, and occasioned dissensions and distrusts among the flocks committed to their charge. The Convention, therefore, which framed our constitution, thought it wise to set them apart, and to confine them to the high and honourable office of instructing the people in their most important duties, and to exempt them from all those offices which would expose them to the rancour of political contests. But what analogy is there between these provisions, and that by which all people of a certain complexion are to be excluded from the right of suffrage? A clergyman has that right; a black is to be excluded from it. A clergyman may not be elected, a black man may be. The disability of the clergyman is annexed to the clerical character, and ceases with it; the disability of the black man is to be annexed to his blood, is never to be removed, and is to be inseparable from him and his posterity to the latest generation. Again it has been urged, that the case of the people of colour is similar to that of the Indians. This also is a mistake. The Indian tribes are considered by us as independent nations. We send to them ambassadors, we receive ambassadors from them, and make treaties with them. They are aliens to us, and we to them.

Under these circumstances, they are no more entitled to vote at our elections, than Englishmen, Frenchmen, or other foreigners. But should an Indian forsake his tribe and settle in the county of Dutchess, his child, born there, would be as much a citizen, as either of the members from that county, and as much entitled to a vote. Another argument, sir, has been strongly pressed by the gentleman from whom I have the misfortune to differ upon this occasion. It is insisted, that this Convention, clothed with all the powers of the sovereign people of the state, have a right to construct the government in the manner they think most conducive to the general good—If, sir, right and power be equivalent terms, then I am far from disputing the rights of this assembly. We have power, sir, I acknowledge, not only to disfranchise every black family, but as many white families also as we may think expedient. We may place the whole government in the hands of a few, and thus construct an aristocracy; nay, I do not perceive why the reasons of some gentlemen would not prove, that we have power to confine the government to a single family, and then a monarchy might be the result. But, sir, right and power are not convertible terms. No man, no body of men, however powerful, have a right to do wrong. And if it be unjust to exclude from all participation in the government of their country, those who are the free born natives of its soil, and who possess all the qualifications required from others to whom we secure the right of suffrage, merely because their complexion displeases us, then, whatever may be our powers we have no right to commit this injustice. Mr. Chairman, we have often heard the term legitimate, and we have been taught to abhor it. What is the meaning of this term? It means, in the language of courts, that by the ancient constitutions of certain countries, all power is vested in a few families, some royal, others noble, and that none other have a right to interfere in the government. We consider this doctrine at once odious and absurd, and we call upon the citizens of those countries, to resist it even unto blood. And yet, sir, we now sit here

debating whether we shall confine the government of this state to certain families, and whether all the other families in the state shall not be forever excluded from any share of it. To this, my opponents answer, that the safety of the people is the supreme law and that the moral condition of the people of colour, renders their exclusion an act of duty—and a gentleman opposite has asked me, whether, notwithstanding my abhorrence to slavery, I would advise the state of South-Carolina, or of Georgia, to adopt the measures of an immediate emancipation. I had already given a distinct answer to this question in the observations which I first addressed to the committee on this subject—I then said, that an immediate and universal emancipation of the slaves in those states, would be productive of more misery, and probably of more crime, than a continuance of the present state of things, and that therefore, I should not advise it—and I admitted, that great and imperious public necessity would justify a sacrifice of private right to the public good—But, sir, I appeal to the candour of the gentlemen themselves, whether they have made out a case of such necessity. It had not been, nor could it be, asserted, that the votes of the coloured population have ever occasioned the smallest inconvenience, or the slightest discontent, in a single county of the state, except New-York. And it appears that even in that city, the number of those votes at the last contested election were less than two hundred—and is it possible that you will violate a single principle of justice, or of equal liberty, in order to obviate the inconvenience of this contemptible number of votes?

I am told, sir, that the southern states are about to emancipate their slaves, and that we shall then be overrun by an emigration of free blacks from those parts of the union. Happy should I be, sir, if this intelligence were confirmed. But where is the evidence of this approaching emancipation? I have heard, indeed, that the southern planters were adopting measures to rivet more firmly the fetters of slavery, but never that they were beginning to break them. I have heard of laws that forbade the ministers of the gospel to proclaim them the glad tidings of salvation. I have heard of laws to prohibit any man from imparting to them a knowledge of letters, and of the first rudiments of literature. I have heard of laws which prohibited manumission—But I have not heard of a single measure which tended to prepare them for the enjoyment of freedom, or which indicated an intention of granting it.

I have yet, sir, to notice the arguments of the gentleman from Saratoga, (Col. Young)—these were avowedly addressed, not to our reason, but to our prejudices, and so forcibly have they been urged, that I feel persuaded they have had more influence on the committee, than all that has been said beside on this occasion. Though repeated in various forms, they may all be summoned up in this: that we are accustomed to look upon black men with contempt—that we will not eat with them—that we will not sit with them—that we will not serve with them in the militia, or on juries, nor in any manner associate with them—and thence it is concluded, that they ought not to vote with us—how, sir, can that argument be answered by reason, which does not profess to be founded on reason? Why do we feel reluctant to associate with a black man? There is no such reluctance in Europe, nor in any country in which slavery is unknown. It arises from an association of ideas. Slavery, and a black skin, always present themselves together to our minds—But with the diminution of slavery, the prejudice has already diminished, and, when slavery shall be no longer known among us, it will perhaps disappear—But, sir, what sort of argument is this? I will not eat with you, nor associate with you, because you are black; therefore I will disfranchise you. I despise you, not because you are vicious, but merely because I have an insuperable prejudice against you;—therefore I will condemn you, and your innocent posterity, to live forever as aliens in your native land. Mr. Chairman, I do trust, that this committee will not consent to violate all those principles upon which our free institutions are founded, or to contradict all the professions which we so profusely make, concering the natural equality of all men, merely to gratify odious, and I hope, temporary prejudices—Nor will they endeavour to remove a slight inconvenience by so perilous a remedy as the establishment of a large, a perpetual, a degraded, and a discontented *caste*, in the midst of our population.

The question on striking out the word *white*, was then taken by ayes and noes, and decided in the affirmative, as follows;

AYES—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Brinkerhoff, Brooks, Buel, Burroughs, Carver, R. Clarke, Collins, Cramer, Day, Dodge, Duer, Eastwood, Edwards, Ferris, Fish, Hallock, Hees, Hogeboom, Hunting, Huntington, Jay, Jones, Kent, King, Moore, Munro, Nelson, Park, Paulding, Pitcher, Platt, Reeve, Rhinelander, Richards, Rogers, Rosebrugh, Sanders, N. Sanford, Seaman, Steele, D. Southerland, Swift, Sylvester, Tallmadge, Tuttle, Van Buren, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Ward, A. Webster, Wendover, Wheaton, E. Williams, Woodward, Wooster, Yates—63.

NOES—Messrs. Bowman, Breese, Briggs, Carpenter, Case, Child, D. Clark, Clyde, Dubois, Dyckman, Fairlie, Fenton, Frost, Howe, Humphrey, Hunt, Hunter, Hurd, Knowles, Lansing, Lawrence, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Pike, Porter, Price, Pumpelly, Radcliff, Rockwell, Root, Rose, Ross, Russell, Sage, R. Sandford, Schenck, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Spencer, Starkweather, I. Sutherland, Taylor, Ten Eyck, Townley, Townsend, Tripp, Van Fleet, Van Horne, Verbryck, E. Webster, Wheeler, Woods, Young—59.

Gen. Root observed, that he thought the report of the committee was in some respects objectionable. There was danger of extending the right of suffrage too far. It was now extended to *negroes;* or in the polite language of the day, to *coloured people.* It was in his opinion inexpedient to admit *strolling* voters. With a view to prevent it, and to compel those to contribute to the support of the government, in which they claim to participate, and whose protection they receive, he would now move to strike out all that part of the first section of the report which follows the word " years," and to insert in lieu thereof an amendment, the principle of which he had previously suggested.

The amendment was thereupon read, as follows:

Every male citizen of the age of twenty-one years, who shall have been one year an inhabitant of this state, and for six months a resident in the town, county, or district, where he may offer his vote, and shall have been, for the year next preceding, assessed, and shall have actually paid a tax, either to the state, county, or on the highways; or, being armed and equipped according to law, shall have performed within that year, military duty in the militia of this state; and the sons of such citizens, being between the age of twenty-one and twenty-two years, shall be entitled to vote, in the town where they may then actually reside, for any elective officer in this state. But no person shall be allowed so to vote, who would not, if an able bodied man, and within the proper age prescribed by the laws of the United States, be liable to the performance of militia duty; unless exempted by the laws of the United States, or of this state; on account of some public office, or being employed in some public trust, or particular business, deemed by the legislative authority to be specially beneficial to the United States, or this state; or unless he shall have paid, within the year next preceding his offering his vote, a fair equivalent, in money for his personal services and equipments; to be determined by the legislature, according to the estimated expense in time and equipments, of an ordinary able bodied and efficient militia man: *Provided,* That this prohibition shall not extend to any person above the age required by law for the performance of militia duty, who would have been liable to perform the same, or to pay an equivalent therefor, before arriving to that age.

Judge Platt remarked, that he should oppose both the amendment, and the report of the select committee; because in both cases, the test of the right of suffrage was made to depend on the volition of the general government; a government moving in a sphere beyond our control. By the provisions both of the report, and of the amendment, if a man paid a tax to the United States, he would have a right to vote. Suppose this state should lay no tax, then the general government, by imposing a tax, would have the power of conferring the right of suffrage on that portion of our fellow citizens who should pay it. It was incorrect in principle; for the right of suffrage should be regulated only by the will of the people of this state.

Mr. Eastwood remarked, that as the amendment was long, and at present appeared to be crooked, he thought it would be well to have it printed before it was acted on.

On motion it was then resolved to pass over the *first*, and to take up the *second* section of the report.

GEN. ROOT moved to strike out the word *shall*, and insert *may*. Carried.

The question was then taken on the second section, as amended, and carried.

MR. WENDOVER moved that the question on the third section be divided. That course was adopted, and the question was taken on the first part of the section, to the word "established," inclusive, and carried.

The 2d clause was then read, as follows :—"The legislature may provide by law, that a register of all citizens entitled to the right of suffrage, in every town and ward, shall be made, at least twenty days before any election ; and may provide, that no person shall vote at any election, who shall not be registered as a citizen qualified to vote at such election.

MR. HUNTER moved to strike out in the residuary part of the section, the words *may*, for the purpose of inserting the words *shall*, so as to make it imperative on the legislature to conform to the course described in the report.

CHIEF JUSTICE SPENCER expressed his gratitude to the committee for their exertions to prevent the evils that were attendant upon our mode of election. He thought the course recommended by the committee would conduce to peace and quietness at the polls, and prevent those scenes of iniquity and perjury that had been often witnessed with pain, and which had a powerful tendency to sap the foundation of morals, and the principles of justice.

GEN. ROOT opposed the motion, and was also opposed to the principle of the report. It contemplated, he said, the establishment of a tribunal unknown to our laws—sitting in secret—making out a register upon evidence not capable of being contradicted, and this, too, without providing for the proscribed, whose names were not on the register, any mode of redress.

COL. YOUNG was opposed to the amendment, but in favour of the report. The committee had left the subject in the nature of a recommendation to the legislature. Its merits would be canvassed, and it would be ultimately adopted or not as the people should see fit. He would unfetter the legislature from any restraints on that subject, by which they might suppose themselves at present bound. He hoped the recommendation would be ultimately adopted by the legislature. Among other benefits it was calculated to produce, it would greatly diminish the expense of elections. Instead of three days to hold the polls, it would probably require but one. In the eastern states that practice had prevailed, and he was informed that 6 or 7000 votes were received in Boston in a day. He hoped we should follow the example.

MR. VAN BUREN thought it would be dangerous to make it obligatory upon the legislature to adopt the course recommended in the report. He was therefore opposed to the motion.

MR. SHARPE concurred with the gentleman from Otsego, that it ought to be optional with, but not made imperative upon, the legislature to pass such laws as the clause recommended.

MR. BRIGGS was in favour of striking out the whole of the last part of the section.

MR. CRAMER was in favour of the proposition, without the amendment offered by the gentleman from Ulster, (Mr. Hunter.) It was safe to trust to the legislature so long as such men, as the gentleman from Delaware, (Mr. Root,) were members of it, to stand as sentinels. He recapitulated and dilated upon the arguments which had been advanced by those who preceded him in the debate.

GEN. TALLMADGE rose to remark, that the reason why a register had not before been made, was, that the legislature had not the right to do it ; and as the legislature would not hereafter have such right, since it would be a modification of the elective franchise, he hoped the section would be adopted.

MR. VAN BUREN said, that the register was no part of the qualifications of voters, and that the legislature now have the power to pass laws authorising an enrolment of the electors.

GEN. ROOT said he now comprehended the views of the committee in reporting this strange section. From the remarks which had dropped from gentlemen in the course of the debate, they were governed by motives of economy.

We must have registers made out, because the town of Boston, and other compact towns in New-England, give in their votes in a single day. He assigned his reasons at some length against the provision, and the evils which would attend its execution. It would be inconvenient and vexatious, subjecting the voters to much trouble and expense, without any benefit.

Mr. Burroughs strenuously advocated the section. He had witnessed the scenes of corruption and crime at the polls, which had been alluded to in the debate, and which this section would prevent.

Mr. Briggs opposed the clause.

Mr. Sharpe wished the ayes and noes to be taken on the question of striking out "*may*" and inserting "*shall.*" He was in favour of the clause as reported.

Mr. Burroughs made a few remarks in reply to the gentleman from Schoharie.

Mr. Briggs moved to strike out the 2d clause.

Gen. Root thought that both motions might be tried by taking the question on the section as reported, and moved accordingly.

The question on the latter clause of the section was then taken and carried in the affirmative.

Mr. Briggs objected to the mode in which the question was put; but before he had gone through with stating his objections,

On motion of Mr. Livingston, the committee rose, reported progress, and had leave to sit again.

Col. Young remarked, that while in committee of the whole, a motion had been made, that the amendment to the first section, offered by the gentleman from Delaware, (Mr. Root) be printed. As that motion was not acted on, he now moved that the usual number of copies be printed.—Carried; and the Convention then adjourned.

FRIDAY, SEPTEMBER 21, 1821.

The Convention met at the usual hour. Prayer by the Rev. Mr. Mayer. The minutes of yesterday were then read and approved.

FUTURE AMENDMENTS TO THE CONSTITUTION.

Gen. Swift, from the committee on future amendments of the constitution, made the following report:—

And be it further ordained, &c. that if, at any time hereafter, any specific amendment or amendments to the constitution shall be proposed in the Senate or Assembly, and agreed to by two thirds of the members elected to each of the two houses, such proposed amendment or amendments, shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen, and shall be published for six months previous to the time of making such choice; and if, in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of the Senate and members of Assembly elected, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such a manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of Assembly voting thereon, they shall become part of the constitution of this state.

On motion of Col. Young, the foregoing report was referred to the committee of the whole, and the usual number of copies ordered to be printed.

THE ELECTIVE FRANCHISE.

The Convention then resolved itself into a committee of the whole on the unfinished business of yesterday—Mr. N. Williams in the chair.

The 4th section, abolishing all existing qualifications of electors, was read, when

Chief Justice Spencer wished to enqire whether a constitutional provision was necessary to abolish the existing qualifications. Are they not abolished by the latter part of the 7th section, particularly in respect to the oaths now required? That section prescribes the oath that shall be taken, and declares any other unnecessary; on the other point, the substitution of new qualifications of necessity, and ipso facto, abolishes the old.

Mr. Sanford made some remarks in reply to Mr. Spencer; and, as we understood, in opposition to his views.

Col. Young said these amendments were to be proposed merely as amendments; and, therefore, it was thought best to make them plain and simple, so that, ordinary persons might at once see their bearing; and hence it was deemed advisable to introduce this clause specifically, annulling the former qualifications of voters. If, however, our whole constitution, or rather those parts of it which, on a review of the whole shall, be retained, are to be re-enacted, then, of course, this clause is not worth retaining, because we should not re-enact the old qualifications. The clause had better stand as it is, perhaps, for the present; and if, on a comparison hereafter, when all the amendments shall be before us, with other provisions and clauses, this shall be found redundant, it can then be expunged.

Mr. Briggs. If I understand the subject, sir, we have made provisions for persons elected to office to take certain oaths. Now, if the legislature is not to prescribe this oath of allegiance, it is best to say so.

The 4th and 5th sections were then passed, and the 6th section, requiring that the votes at all elections should be by ballot, being read,

Gen. Root said, if this provision was meant to extend to the votes in town meetings, for the election of all petty officers, fence-viewers and damage prizers, (*hog howards*, as they were called in Connecticut,) and others, it was carrying it too far. He thought it had better be left as it was.

Col. Young thought that the force of this objection which was made in the committee, had been obviated by an amendment—he found he was mistaken, and would therefore propose an addition, that this clause should extend only to those who were not now elected, viva voce. The officers who are now elected, viva voce, are so few, being only the road masters and fence viewers, that it seems scarcely necessary to make an exception, in their favour, in the constitution: though I have no objection that the gentleman from Delaware should make this amendment.

Gen. Root. The amendment I would propose, sir, is to strike out the section. Our present constitution provides for the election of all important officers by ballot, and it is not worth while to say that other elections shall be by ballot, when it may be necessary that the legislature should direct otherwise, in some cases. Where towns are extensive, this voting by ballot, even for a path master, might lead to inconvenience and bad results—it would make it necessary that the political parties should meet in caucus for election of fence viewers and path masters. He thought this not a desirable state of affairs.

Col. Young (to obviate the gentleman's objection) moved the following amendment:—"except such town officers as may, by law, be directed to be otherwise chosen." It is true the original Convention left it to the legislature to say, that if, after experiment, it should be found that voting by ballot was bad in its operation, it might be altered. But as we have now sufficient experience of the salutary operation of this provision, Mr. Young hoped its practice would hereafter be made binding by a constitutional provision.

Mr. Briggs. It seems to me, sir, we had better leave this business entirely to the legislature. One gentleman has suggested a reason for letting the election by ballot remain. It is, that the government will one day fall into the hands of the rich; and then he fears that unless the votes be by ballot, they will all be given as the rich dictate. Sir, when that time comes, I do not much care how they vote, or whether they vote at all. I think we had better leave all this business to the legislature.

Gen. Root thought gentlemen were eager to convert this Convention into a legislature; they were entering so much into detail. The old colonial system of elections was for the sheriff to hold the polls, and the electors came to the hustings and voted viva voce. The actual provision in our constitution was made to guard against the revival of this plan: and it will never be repealed. As to the fear of the rich, when they shall have influence enough to get a law passed, similar to the famous *stand-up law* in Connecticut, then your liberties will be gone—only to be retrieved by a struggle. Sir, if any thing is to be done on this subject, it had better be provided, that the law authorizing printed ballots shall be repealed, and never again be enacted. As it is now, each party, has its tickets printed in a particular way, and the vote of every man is known as well as if he voted viva voce; unless, indeed, by trick, the one party imitate the ballots of the other, for the sake of deceiving the electors, and cheating them out of their votes.

Mr. R. Clarke thought the whole discussion might be easily obviated by a trifling amendment, which he proposed—"all elections shall be by ballot, except those for town officers, who shall be elected as the legislature may direct."

Mr. Sharpe thought the whole clause useless, and wished it might be stricken out. The legislature ought to regulate this matter.

Mr. Burroughs thought if experience had taught us that the mode of voting by ballot was the best, it became our duty to say so in our constitution, and to take it out of the power of the legislature to alter it. We all agreed in the committee, that this mode is the best, and he was therefore in favour of retaining the clause under discussion, with this amendment, "except such town officers as are by law directed to be otherwise elected."

Col. Young explained in what his amendment differed from that of the gentleman last up, and from that of the gentleman from Delaware, (Mr. Clarke.) If their amendments prevail, we shall not only provide that for certain offices the votes shall henceforth forever be taken by ballot, but that the mode now adopted in the election of town officers is also made obligatory by this constitutional provision; whereas I would desire, that as it regards these latter cases, we should leave the mode of election to future legislatures.

Mr. Burroughs replied, that our present mode, both as to the higher officers and town officers, experience had demonstrated to be good, and therefore he wished to retain it.

Mr. Briggs moved that the clause be thus amended—"that all elections by citizens be by ballot, or otherwise, as the legislature may direct." Not seconded.

Mr. Cramer thought gentlemen were too prone to find fault; nothing seemed to suit their views. One day, all confidence is required for the legislature; on another, the legislature is denounced as corrupt, and unfit to be trusted. The gentleman from New-York, (Mr. Sharpe,) who wants to do things at a stroke, is for leaving the whole to the legislature: I am not, sir. The time has been, and may again come, when the legislature will be actuated by corrupt views. I would never, therefore leave it to the legislature to pass upon this important provision; the right of voting by ballot should be secured by the constitution, so that no future law may ever authorize viva voce voting for governors or high officers.

The question on Col. Young's amendment was then taken, and carried; and then the question on the whole of the 6th clause, as thus amended, was carried. The 7th section was then read, prescribing the "oath to be required."

Mr. Wendover wished the oath to be taken by the party's repeating it after the officer administering it, instead of merely kissing the book after hearing it read; and for that purpose, he moved to strike out the word "you," and substitute the word "I," in the oath whenever it occurs.

Mr. President agreed to the amendment proposed by the gentleman from New-York, (Mr. Wendover) but wished to amend the amendment by requiring the party to *subscribe*, as well as take the oath, so that a record may remain on file; and, for that purpose moved the introduction of the words "and subscribe" after take, which was carried. The question was then taken on Mr. Wendover's motion, and carried.

Mr. Sharpe moved that the part of the clause after the 11th line, abolishing all other oaths, except the one there recited, should be stricken out. His object, in this motion, was to preserve the duelling oath as it now exists, and which, if the clause should pass as it is, will be repealed. Sir, the evils of duelling have been acknowledged to be enormous, but since the passage of this law, they have been diminishing; upwards of 40,000 persons in this state must have taken this oath. If the law be continued, a great portion of the population, and all your public officers, will have taken it, and we shall have saved many of our citizens from this vice. It has been attempted, in various parts of the Union, to put a stop to this horrid practice, but nothing has been found so effectual elsewhere, as our law has proved here. It will therefore, I trust, be retained.

Mr. Sanford stated, that, desirable as it certainly was, to abolish such a practice, it must not be attempted at the expense of the constitution, which prohibits any test to any public officer. [He added many arguments which we were unable to hear.]

Mr. Ross submitted an estimate of the mere money-saving effected by an abolition of oaths, without referring to other considerations.

Col. Young said, if these words were stricken out, the legislature will then have power to establish any test, religious or political, which party frenzy or religious bogotry, might lead to. If the gentleman from New-York, (Mr. Sharpe) had moved to substitute any thing to effect the object he had in view, without leaving the door open to others, the Convention would, perhaps, have gone with him, though I should not. But when the gentleman offers any specific amendment to preserve the duelling oath, I shall then take occasion to state my motives for dissenting from him.

Gen. Root said the honourable gentleman from New-York (Mr. Sharpe) was so anxious to preserve the duelling oath, that he was willing to open the door to all sorts of tests rather than lose it. This oath was introduced some years ago, when it was supposed to be popular. It was, if I remember, introduced by a gentleman from Columbia, now on this floor, (alluding to Gen. J. R. Van Rensselaer.) I have always objected to it, as absurd and ridiculous. It is ridiculous to see grave senators, with their gray locks floating over their heads, solemnly brought up to swear that they will not fight a duel; that they will not commit a crime which no body suspects them of. Sir, you and I have both taken this oath, yet, sir, we could not have been made to fight a duel without this oath. You, Mr. Chairman, would not fight a duel more readily than myself. There is another ridicule belonging to it—the judges of the supreme court are obliged to go through a mummery of requiring, at all the circuits, that the grand jury should present the offender against the duelling act, and the act against private lotteries, against childrens' *three* cent lotteries, when, sir, in the counties where these charges are made, no such thing is even heard of. Sir, duelling was checked in this state, not by our law, but by an event which occurred in 1804: Checked I say, no, sir; now and then some foolish midshipman will go over to the monument on the Jersey shore, and think it an honour to die there. But shall we make grave senators take this oath, in order to prevent these epauletted gentlemen from taking a shot at each other? No, sir, duelling was destroyed in 1804, when two of your most distinguished statesmen literally destroyed each other. The life of the one, and the political consequence of the other, were destroyed. Sir, let it appear on your journal, that after your select committee reported this prohibition of test, the Convention gravely and deliberately struck it out; then, sir, future legislators may introduce religious tests—your officers and legislators will be required to swear to religious creeds, and then we shall have political tests and political creeds, and such may be framed. Then you indeed permit the hypocritical christian, and pretending patriot, to take their seats as they will take the oaths; but you will exclude men who feel their religion at their heart, and the truest friends of their country.

Mr. Sharpe said, in order to avoid discussion, he would withdraw his motion, and amend it by moving to insert the oath against duelling, as now prescribed by law.

Chief Justice Spencer thought the question now under discussion unprofitable and improper. We did not come here to discuss the fitness or unfitness of the duelling act, in order to leave open the door for the gentleman from New-York to introduce his motion, and, at the same time, to do away the objection to which his first motion was undoubtedly liable, by opening a way for religious tests. The better amendment would be, that a clause against any religious test should be inserted, and leave to future legislatures the discretion of enacting any laws on the subject of duelling. He thought, notwithstanding the ridicule thrown on the subject by the gentleman from Delaware, many beneficial consequences had arisen from this law, and that it had saved many valuable lives. Mr. S. concluded by moving to insert before the word *test*, the word *religious*.

Col. Young said, if the gentleman from Albany had added "political and moral," after the word "religious," he would have assented to his amendment, but not otherwise. Why, sir, what is the operation of this duelling law? It is this, that after the people of the state have elected, by their free votes, a citizen for governor or member of the legislature; after they have passed upon his qualifications, and manifested their confidence in him, you are to draw him up and make him swear he has not committed a murder. Sir, this will never do. Has duelling been so destructive, so prevalent in this state, as to require a constitutional provision against it? Let any country member ask himself, if, in his county, he has ever heard of a duel being fought.

No, sir—In my county, (Saratoga) I never heard of a duel. There was indeed a most ludicrous combat (according to the description which I saw with pleasure in the newspapers) recently at the springs, between two servants, cooks at rival hotels; but among the citizens in Saratoga, in Montgomery, in Washington, and Warren, I never heard of an instance of a duel—and I ask, country members, whether they, in their counties, ever heard of any. It is true, indeed, during the late war, the officers of the army, did, on their march through our state to the frontiers, occasionally fight—but our laws would not reach them, and their example misled none—Whence, then, all this sensibility? —from the city of New-York. It is there, sir, that this practice prevails: and because it is felt as an evil there, the whole state is to be subject to the consequences of it? It would be thought a curious piece of quackery, that for a sore in the foot, a plaister should be applied to the head—Yet, sir, in this act of political quackery, a cataplasm is spread over the whole state to cure a sore in the city of New-York. Sir, I have, on one occasion seen the practical operation of this law. A member elected to the assembly of this state—a citizen who had gallantly served in the late war—who was elected to this house by those with whom he had gone out to battle, was deprived of his seat because he could not conscientiously take the oath. The circumstances, sir, were these;—At the close of the war, his business had called him to Canada: on board of the boat he found himself in company with some British officers, who were reviling and insulting the American name and nation—One of these officers was known to our countryman, whom he in turn knew to have served in the American forces —The insolence of this British officer became intolerable, and the American felt bound to call him to an account—the British officer retracted, but the American I allude to had gone so far, and said so much, that he could not, conscientiously, take the oath required by our laws—Yet, sir, will any one blame the conduct of this gentleman? Is an American officer to sit tamely by, when the character of his country, its glory, its name, and flag, are insulted, and make no reply? Is he to bear the insolence and sneers of foreigners without resentment, or if he resent them is he to be subject to disabilities?—Sir, I think an officer cannot expose his life more honourably, or more usefully, than in defending, upon such occasions, the honour of his country. It is to feelings such as these that you are indebted, for the high and chivalrous character of our officers—It is from such feelings that springs that high sense of honour, which they will permit none with impunity to assail. There are occasions, sir, when it may become the duty of officers, thus to resign their lives—witness the occurrences in the Mediterranean—Our officers were treated with disrespect—they

were insulted, *on account of their nation and flag* ; they were sneered at *as Americans*. How did they meet it, sir—They called their insolent assailants to an account. They evinced their readiness, their zeal, to defend, as individuals, as well as in their station as officers, the honour of their country—and it soon became the fashion not to question it. And was this of no service? But the gentleman from New-York (Mr. Sharpe) says, that since the enactment of this law, no public officer in New-York has fought a duel. I do not know, sir, whether he was a public officer, though I rather believe he was, whose death in the streets of New-York was, I verily believe, occasioned by this law. I do, on my conscience, believe that the death of that person, in such a manner, is to be ascribed to your duelling act. He had taken the oath, and when challenged, could not fight, and the consequence was, that his blood was shed at mid-day in the streets of New-York. Sir, it is better to leave the correction of this evil to the existing laws against it, and to the feelings of the community: they will do more to restrain it than oaths or disabilities.

Mr. Tompkins. Sir, I object to this amendment: if you make an officer swear that he has not committed murder in this way, why not that he has not committed it in another? Why not that he has not committed larceny, sacrilege, or any other crime? Sir, the laws, if duly executed, already render a man convicted of the crime of duelling, ineligible. The truth is, your executive and judiciary have not character and independence enough to execute the laws, as they stand, against the persons usually guilty of this crime. They are, for the most part, influential persons whom judges are afraid to correct, and thus the law is rendered a dead letter. But, sir, we want no additional laws on this head; it is only necessary that those in existence should be faithfully and impartially enforced.

Mr. Jay observed that he had originally introduced this law, and not the gentleman from Columbia, as had been stated. I drafted the law, and though it was altered in its passage through the house, I voted for it. It went to the council of revision, which was said to be divided. The bill was not returned that year. But I feel ready to confess, that if I had seen the objections to it presented by the honourable the Chancellor, I should not have voted for it; and I am ready, therefore, to assent to the repeal of the law on those grounds—though if any thing were wanting to induce me to regret this law, it would be the avowal on this floor, that under any circumstances, a violation of the laws of God and man can be justifiable.

The question on Mr. Sharpe's motion to insert the duelling act, was then taken, and lost.

Chief Justice Spencer's amendment was then read; and the question being called for by ayes and noes, it was lost.

AYES—Messrs. Bacon, Baker, Barlow, Beckwith, Breese, Brooks, Buel, Carver, D. Clark, R. Clarke, Dyckman, Hees, Hunter, Huntington, Jay, Jones, Lefferts, P. R. Livingston, M'Call, Nelson, Pitcher, Platt, Radcliff, Rogers, Rose, Sanders, Sharpe, I. Smith, R. Smith, Spencer, Starkweather, D. Southerland, Sylvester, Tuttle, Van Buren, Van Ness, J. R. Van Rensselaer, Verbryck, A. Webster, Wendover, Wheaton, E. Williams, Wooster—45.

NOES—Messrs. Birdseye, Bowman, Briggs, Brinkerhoff, Burroughs, Carpenter, Child, Clyde, Collins, Cramer, Day, Dodge, Dubois, Duer, Eastwood, Edwards, Fairlie, Fenton, Ferris, Fish, Frost, Hallock, Hogeboom, Humphrey, Hunt, Hunting, Hurd, Kent, King, Knowles, Lansing, Lawrence, A. Livingston, Millikin, Moore, Munro, Park, Paulding, Pike, Porter, President, Price, Pumpelly, Reeve, Rhinelander, Richards, Rockwell, Root, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seaman, Seely, Sheldon, Steele, I. Sutherland, Swift, Taylor, Ten Eyck, Townley, Townsend, Tripp, Van Fleet, Van Horne, S. Van Rensselaer, Ward, E. Webster, Woods, Woodward, Yates, Young—74.

Gen. Root wished to know whether every officer, from the highest to the lowest, should take and subscribe the oath in the seventh section—your town officers of the lowest grade. If such be the purpose, this people will think an important change has taken place in the public sentiment since last year. For then a committee was raised, and a report was made by an honourable gentle-

man from New-York, which ought to carry conviction with it, against the abuse of the multiplication of oaths. A law was passed in conformity to it, abolishing oaths of town officers, and I wish gentlemen of the committee would make this part of the report conform to this law.

Mr. Sanford spoke in explanation, but inaudible. He thought the constitution of the United States interposed, to prevent the abolition of such oaths.

Gen. Root thought the terms "judicial and executive," embraced all officers even to a road master, who is an executive officer in his way. Mr. Root here read the preamble of the law of last year; which law he feared the clause under consideration repealed.

Mr. Sanford again spoke in reply—taking the distinction that the oath now required, was only to be taken by those officers whose stations required them to swear to the constitution of the United States.

Chief Justice Spencer thought the clause reported embraced all officers, and proposed a reading, which would except from the oath such executive officers, not enumerated in the clause, as the legislature may require.

Mr. Tompkins thought the amendment useless. The judiciary must decide who are executive officers within the meaning of the clause. This is a matter of construction, and it belongs to the judiciary to establish it.

The Chief Justice withdrew his amendment, and moved to substitute "of the state."

Mr. Briggs. I am opposed to these amendments, all of them. It strikes me, sir, that these oaths have more influence on the small officers, than on higher ones. Sir, I should be for doing away with all oaths, unless they be extended to these town officers.

Mr. King asked, if it was thought the provision could be binding on officers of any other state?

Mr. Radcliff said the insertion of the word state, was meant to distinguish offices held *under the state*, from those held *under the towns*.

Chief Justice Spencer and Mr. Tompkins made some further remarks, when the question was taken on Mr. Spencer's motion to insert the words "of this state," and lost. The question on the entire section was then taken, and carried.

The first clause, which had been passed over, relative to the qualification of electors, was then taken up again.

Mr. Sanford moved that the words *six months* be stricken out, in order to insert *one year*, so as to require a year's residence for the electors.

Gen. Root, in calling for the consideration of his substitute, offered yesterday, said, a residence of one year was required, and he presumed the consideration of that was first in order, (which being assented to) Mr. Root went on to say, that in addition to the residence of one year in the state, he wished that a residence of six months should be required in the town or county in which the vote is to be given, in order to prevent contiguous counties from pouring their population into another for a special purpose. An evidence of the necessity of such a provision was exhibited not many years ago in Maryland. There is a little island called Kent island in the Chesapeake, which is a district, and sends four delegates. The party wishing to carry Kent island district, not having any chance in the neighbouring district of Baltimore county, sent a large body from it to obtain a residence in Kent island under their laws, carried the election, and obtained the ascendancy in the legislature. There are other differences between my substitute and the report. The committee require enrolment in the militia—this is technical. A captain is not enrolled, and therefore, though serving in the militia, not having been enrolled, his vote might be questioned. Another difference is, the mere appearing on parade, with a broomstick, or club, is to confer the right of voting—now, sir, I do not desire any strolling voters, nor any broomstick voters. I only want those who may contribute to the defence of the country. They should *be armed and equipped according to law*, before they should be privileged to vote. Those who are not thus armed and equipped will probably be entitled to vote on other grounds.—and those excluded will be a very small proportion, and not of the description of people who are of any value. And I am clear that those who come in under this clause when they

would be excluded by all the other provisions, should be at least required to be "armed and equipped." I thank the honourable gentleman from Albany, (Mr. S. Van Rensselaer) for his suggestion respecting the sons of voters—I borrow it from him, and hope plagiarism will not be imputed to me. This provision will embrace those whose bodily infirmities, or other evils, exclude from the militia. Then, sir, I insert another clause which will exclude "negroes," and I intended it should, until the government of the United States should see fit to admit the introduction of negroes into the militia. But the honourable gentleman from Oneida, (Mr. Platt) yesterday said this would be to subject the right of suffrage to the legislation of a foreign government: and does the gentleman call the government of the United States a foreign government? Is this the doctrine of the day? Sir, is the gentleman unwilling to recognize the independency of the United States, as far as the constitution has delegated power to them? We are the orbits revolving around the greater planet.

With regard to the militia, Congress is supreme, and when by it the negroes are made to train, then let them vote. Sir, there are other classes affected by this clause:—Quakers and Shakers—if they pay their commutation, then they vote; if they do not, exclude them. It is the bounden duty of the legislature, as the constitution now stands, by its 40th sect. to provide that your militia be efficient and that those who may be conscientiously scrupulous about bearing arms, *shall* pay a commutation therefor. But we have, sir, a law exempting such scrupulous persons, contrary, as I believe, to the constitution. It has been got along by what is hardly entitled to be dignified as a "quibble." It has been said on this floor, that as quakers would not fight, their services were worth nothing, and therefore, as the commutation is required to be equivalent to the service, if that be worth nothing, the commutation should be nothing. To guard against such a contemptible subterfuge in the future, it has been required in the clause I propose, that the equivalent shall be equal to the services of a well equipped and able bodied ordinary militia-man. On paying such a commutation, these Quakers and Shakers will be entitled to vote; and so they will, after they have passed the age of forty-five. But this last advantage is not extended to negroes. Sir, those who are withdrawn from the world and the world's people, those who are set apart, and who refuse all present service, and all commutation towards the defence of the country, should have no voice in electing "the commander in chief of all the land and naval forces." They refuse either to serve in, or to support, those forces, and are nevertheless to be privileged to vote for the chief of their department. Sir, in time of peace, I am told, and believe, that those people seldom vote, but when war comes they are active enough—and if they are active in voting, I would warm them into activity in paying too.

Judge Platt. I do not rise with an intention of discussing the question, how far it is proper to extend the privilege of voting at elections; but merely to remark, that the gentleman from Delaware (Mr. Root,) has not given a satisfactory answer to the objection which I had the honour to submit yesterday. My objection is, that by the report of the select committee, and the amendment offered by the gentleman from Delaware, the criterion of the right of suffrage is made to depend on the will and pleasure of congress. Both the report and the amendment provide, that all who have been enrolled and trained in the militia, shall be electors. Now, by the constitution of the United States, congress have the power of "organizing, arming, and disciplining the militia." The laws of congress prescribe who shall be enrolled in the militia, and who shall be exempt from that service. And their discretionary power on that subject, may be varied in its exercise, as often as they please. So, according to the report of the committee, the payment of "*any tax assessed upon him*," is to confer the privilege of voting on the person assessed. Congress have absolute power "to lay and collect taxes," and make the assessment by their own officers, on such persons as they deem proper, and to vary the rule of assessment at pleasure. The consequence will be, if the report of the committee, or the amendment now offered, prevails, that we shall transfer to congress the all-important power of prescribing the qualifications of voters in our own state. Now, sir, I object to this in principle. I admire and

venerate the constitution of the United States, because I believe it a wise and well balanced government; but the state governments, as sovereign and independent, are equally important, and necessary for our security and happiness. I wish to preserve each in its appropriate sphere: and therefore it seems to me utterly inadmissible, that in defining the right of suffrage in our state, we should adopt a test, which is to depend on the fluctuating will of another government, over which we have no control.—This is the chief corner stone of our political edifice; and shall we refer it to congress to determine its shape and size, and in what manner it shall be laid? My constituents are intelligent, and jealous of the least invasion of their rights. They sent me here to aid in fixing and defining, within reasonable and certain limits, the inestimable right of suffrage. Should the proposition now before us prevail, I may be asked, when I return home, whether we have secured the electoral franchise to those who ought to enjoy it? If I should answer that we have fixed and established it, as to some persons, but that we have referred it to congress to determine whether other persons should or should not have the right of voting in our elections; I fear, sir, the answer would not be satisfactory. If my neighbour should enquire whether, by our new constitution, he has a right to vote; I might answer, you have no such right at present; but perhaps congress will grant it to you hereafter; or, I might say, you are entitled to vote now, but congress may disqualify you next year. I must refer you to Washington for information on that point. It is very uncertain what the members of congress from other states may judge proper in the case; but I can inform you, for your satisfaction, that in Virginia no man is allowed to vote unless he has a large freehold estate; and in South Carolina, no person can be elected as a member of the legislature, unless he be a proprietor of 500 acres of land, and ten slaves. Whether the delegates from those states will think proper to allow such a man as you, to vote in this state, is uncertain. Perhaps, if you are disposed to vote according to their wishes, you may be permitted to enjoy the privilege.

Mr. Chairman, I hope and believe there is not one of my constituents, who would not be indignant at such an explanation.

The gentleman from Delaware lately told us, that no free negro ought to be allowed to vote; and I agree with him, that most of them are at present unfit to exercise that privilege. That gentleman also stated, that the votes of three hundred free negroes in the city of New-York, in 1813, decided the election in favour of the federal party, and also decided the political character of the legislature of this state. He now proposes to confer the right of suffrage on all who train in the militia. By the existing law of congress, no black man can be enrolled in the militia. But suppose an important state election is about to take place here, or that an election of president and vice president is to be made, by electors who are to be appointed by our next legislature; is it not possible that congress might wish to control the choice of forty presidential electors in this state? If so, they have only to enlarge or control the description of persons who are to be taxed, or enrolled in the militia; and our right of suffrage must be enlarged or abridged accordingly. By the census of 1820, it appears there are 10,368 free people of colour in the city of New-York. By including free black men in the militia, which congress have an undoubted right to do, they would thereby create at least one thousand voters in the city of New-York, which might very probably determine the political character of our state legislature, and of course would determine the choice of presidential electors.

The report of the select committee, and the amendment offered by the gentleman from Delaware, are both liable to this objection. In my judgment, they adopt a principle, which undermines the foundation of state sovereignty: and I therefore revolt at the proposition.

Mr. Ross stated, that in the committee it had been thought best not to require a residence of six months in the ward or town in which the vote is given, principally out of consideration to the cities, where it is frequently the habit to move from ward to ward—and by a residence of six months in the town or ward, such persons would lose their votes. Some other observations on other provisions were made by Mr. Ross.

Mr. Bacon thought the shape in which this proposition was presented was

very embarrassing. If we adopt this substitute in *toto*, we not only strike out the first clause of the report, but we pass affirmatively on the various provisions of this amendment—we take them all together—it is not allowed by the rule of the Convention to add an amendment to an amendment, and we must therefore take it whole, or not at all. We are, therefore, losing time.

Gen. Root said he was sorry the gentleman felt himself in such a difficult situation, but he thought he could relieve the gentleman from his embarrassment. The amendment was amendable. The question on it might be divided; motions to strike out and insert, are in order. There is no difficulty in it.

Mr. Eastwood. The gentleman from Delaware, (Mr. Root,) previous to offering his amendment, spoke at length on the subject; not, however, in favour of his amendment; for I presume he could say nothing in favour of it; but against the report of the committee, in order to have room for his substitute. But I think there is nothing which ought to entitle this amendment to farther consideration, except the source from which it came: and here, in justice to the mover, I beg leave to say, that I do consider him one of the most honest and perfect men in this state; I mean to be understood in a legislative point of view; but honest as that gentleman may be, there can be no great harm in watching him pretty narrowly on this occasion; for, if I mistake not, it will take several blasts from Delaware before this amendment will be blown through the house, as it now stands. A very honest lawyer, (I beg pardon, sir,) in looking over this amendment yesterday, said he could not understand it; and I think that he told the truth on that occasion. On the whole, I think it best to dispose of this amendment by laying it on the table with your bill of rights, which went there a few days ago on motion of the gentleman from Dutchess (Mr. Livingston.) Let it lie there with that, until the first day of January next, I should not object to their being released then from confinement, and committed to the flames, where they ought to have been sent before they were ever brought in this hall. I will not point you to any particular line or part of this amendment, but call your attention to the whole fabric. It is all alike. It is all good for *nix come rouse*. The gentleman has undertaken to do too much. Let us lay his amendment aside, and take up the original report, line after line. This will be the proper way, in my opinion, for us to proceed, and much time will be saved thereby.

Mr. Sheldon spoke in favour of several of the provisions of Mr. Root's amendments, which he preferred on many grounds, to the proposition reported by the committee. But when that amendment goes to treat of questions already agitated and decided here, and more particularly when it goes to disqualify a class of citizens for whom I have a great respect, whom on account of their conscientious scruples he wishes to disfranchise, I cannot go along with him. I therefore move you that the question on the substitute be divided, so as to take the sense of the committee on the provisions contained in the first fourteen lines down to the word "state"—of which the effect would be to pass on all the provisions of this substitute, except those disqualifying "quakers and negroes."

A long discussion here ensued between Messrs. Sheldon, Wendover, Sharpe, Root, and the Chairman, as to the proper mode of proceeding in relation to the *amendment* of Mr. Root, which that honourable gentleman declared not to be a *substitute*—(for he had never offered a substitute in his life)—when it was finally, decided to take the question on Mr. Sheldon's motion.

Col. Young declared his preference of many parts of this amendment to the original report of the committee, although he had been a member of that committee. He was willing to require that, in addition to militia duty, the person performing it should be a resident, and be duly armed and equipped. I think there is not much force in the objection made by the gentleman from Oneida, (Mr. Platt.)

Mr. Van Buren thought it impossible to be guilty of a greater political heresy, than was proposed by the clause of the amendment of the gentleman from Delaware, and which his intelligent friend from Saratoga had fallen into—that of subjecting the votes of all the citizens of this state, between the ages of 18 and 45 to a law of congress. (Mr. Root here informed Mr. Van Buren that

the question was now on the first part of the amendment, which did not tough this question.)—In that case, rejoined Mr. Van Buren, the question is much narrowed down? we have all agreed on the abolition of existing qualifications for voters, and I prefer the part of the amendment of the gentleman from Delaware now under consideration, to the report of the committee, and shall vote for it. As to the remainder of it, I presume, upon reflection, it will not be passed.

Mr. Wendover offered another motion, which Mr. Tompkins rose to say he thought out of order, and a discussion arose between Messrs. Tompkins, Young, and the Chairman, as to the point of order, when Mr. Root agreed to adopt it as part of his amendment. The object of it was to insert the word "last" so as to make it necessary that the residence should be for the "last six months" before an election. Mr. Spencer moved to add "next preceding the day of," so as to make it quite clear that the habitation in the state must be for the year preceding the election—which Mr. Root accepted.

Mr. Nelson moved to strike out the words rendering it necessary that a militia-man "should be armed and equipped." If this prevail, Mr. Nelson said, you not only fine the militia-man for not having his equipments, but you disfranchise him—and thus, for not having a bayonet or a priming wire, the citizen is not only subject to a pecuniary fine, but to the loss of his highest political privilege. Mr. Nelson therefore moved an amendment to the effect stated.

Mr. King said, much time would have been saved to the house by amending, by separate provisions, the original report of the committee. The amendment now proposed by the gentleman from Delaware, contains a variety of propositions and qualifications, some of property, some of military service, some of taxes; and we are called upon to adopt them altogether. The gentleman disclaims the name of substitute for his proposition; but he must allow me to call that a *substitute*, and not an *amendment*, which goes to strike out the whole substance of an original proposition, and substitutes others in their place, various in their nature, importance, and effect. If it would suit the convenience of the gentleman from Delaware, it would be accellerating the business of the committee, and perhaps more in order, to propose his separate plans one by one, as amendments, and let us pass on each singly.

Mr. Sheldon rose with great reluctance on a point of order, in opposition to a gentleman of so much experience, and of talents, to which all were disposed to defer. But he must differ from the gentleman last up, and thought the state of the question not difficult, nor even irregular. Mr. Sheldon explained at length his views on the point, and as to the difference between the original report of the committee and that part of the amendment now under consideration.

Gen. Tallmadge made some remarks as to the point of order, and then in conformity with the suggestion of the honourable gentleman from Queens, moved, that the question on the amendment be divided into seven different parts; so that each precise point might be decided by every question.

Gen. Root made some further remarks as to the point of order—when

Mr. Van Buren moved, that the committee rise and report, which was carried; and the President having resumed the chair, the chairman reported progress, and asked leave to sit again; which being granted, the Convention then adjourned.

SATURDAY, SEPTEMBER 22, 1821.

The Convention assembled at the usual hour. Prayer by the Rev. Mr. Rice. The minutes of yesterday were then read and approved.

Mr. Wendover renewed his proposition made several days since, that hereafter when the Convention is in committee of the whole, the chairman shall take the President's seat; on the ground, that in the northwestern part of the house, it was impossible to hear, unless the chair was elevated higher than the seat provided for the chairman. Carried.

LEGISLATIVE DEPARTMENT.

Mr. Hogeboom proposed to offer a substitute for the 5th section of the report of the committee on the legislative department, that the same might be referred to the committee of the whole when on that subject.

After some discussion on the question of order, the same was referred accordingly, after having been read, in the following words :—

"That it shall be the duty of the supervisors of the respective counties of this state, at their annual meetings, to ascertain, by a majority of votes, the sum of money the respective members of the legislature of this state ought to receive for their services per day, and certify, under their hands, and deliver the same to the clerks of their respective counties, who shall keep the same on file, and forthwith transmit a copy thereof to each of the members elect of their respective counties ; and the said members shall deliver the said certificates within eight days after the commencement of the session of the legislature, to the secretary of state, whose duty it shall be to record one certificate from each county, in a book to be kept by him for that purpose ; and it shall be the futher duty of the secretary of this state, within one month after receiving the said certificates, to ascertain the average sum of all the returns received, and certify and deliver the same, one copy to the President of the senate, and one copy to the speaker of the house of assembly, which said sum shall be the compensation to be established by law, adding the usual allowance to the president of the senate, and speaker of the house of assembly."

THE ELECTIVE FRANCHISE.

On motion of Mr. N. Sanford, the Convention then resolved itself into a committee of the whole, on the unfinished business of yesterday, (Mr. Root's amendment,) Mr. N. Williams in the chair.

Chief Justice Spencer moved to amend the amendment under consideration, by inserting after the word "state," the words following :

"Other than for senators ; and that in elections for senators, every free male citizen of the age of 21 years, who shall have been, one year next preceding the election, an inhabitant of this state, and at the time of offering himself as an elector, shall have an interest in law or equity, in his own or in his wife's right, in any lands or tenements in this state, of the value of $250 over and above all debts charged thereon, shall be entitled to vote for senators in the town or ward in which he shall reside."

Mr. Chairman—In presenting you the amendment, (said the Chief Justice,) which I have now moved, it will be perceived that if it be adopted, there will be different qualifications for the electors of the senate, and of the governor, lieutenant-governor, and members of assembly, and all other elective officers. The constitution, as it now stands, provides that the senate shall consist of thirty-two freeholders, to be chosen by the freeholders of the state, possessed of freeholds of the value of 100*l.* over and above all debts charged thereon. The report of the select committee, and the amendment of the gentleman from Delaware, propose, with the dash of the pen, to obliterate this part of our constitution, to destroy a barrier in legislation, which the wisdom of the sages and patriots of the revolution have erected for our protection. It has been insinuated, that as we have already unanimously agreed to abolish the existing qualifications of electors, we in some measure stand pledged to abolish the distinction between the electors of the senate and assembly. This is not a correct deduction from the vote we have given. The vote taken implies no more than that we are willing to extend the right of suffrage, as far as may consist with the public good, but no farther. It will be perceived, that the amendment I have the honour to propose, admits all persons having an interest in real estate of the value of two hundred and fifty dollars, either in law or equity, without regard to the tenure, so that persons having a leasehold interest, or holding lands under contract for purchase, and who shall have by payments or improvements, added to the value to the amount of two hundred and fifty dollars, will be entitled to vote for senators ; and the right will extend to those who hold lands in right of their wives.

It is well known, sir, that in the rapid and unexampled extension of the settlement of the western parts of our state, a mode of selling lands, not within the view or contemplation of the framers of our constitution, has become common. I mean sales by contract, stipulating to give deeds, when the purchase money shall have been paid. In that immense and fertile territory, owned by the Holland company, sales by such contracts are the usual and ordinary modes. This has also been the case, very extensively, in other parts of the state. These industrious and valuable citizens, who have paid portions of the purchase money, or who have made valuable and useful improvements, ought to be entitled to vote for senators, and the amendment I propose will give them that right. They ought thus to vote, because they represent portions of the soil, and because they have that attachment to the preservation of all the rights incident to real estate.

I must not be misunderstood—I am willing and desirous that the rights of suffrage be established on a broad and liberal basis, comprehending for the one branch or the other, all those who possess sufficient independence to exercise this important privilege in a manner compatible with the interests of society itself.

It would seem to me, that those who propose to abolish all distinctions between the electors of the senate, and other officers of the government, were bound to shew to this Convention, either that this abolition was demanded by the farmers and the people of this state, or that the original institution itself was vicious in principle, or bad in its operation. I hope it is not enough to induce us to make such a material innovation in our form of government, merely because we hope, or believe, it will improve our constitution, or that other states have not adopted the same provision.

It has been assumed, that the people call for this alteration—that they do expect an extension of the right of suffrage, I believe and admit; but that they demand the abolition of all distinction in the qualification of electors for the senate and assembly, I do not know or believe; and I may confidently demand the proof of any general call or expectation, that such a measure should be adopted. Has the constitution operated badly in this respect? Or is the organization of the senate unsound or vicious in principle?

If it shall be insisted that for the last twenty years, the senate has not been superior to the assembly in wisdom or gravity, are there not causes by which we can account for this deficiency? The constitution divided the state into four great districts; and although these have been altered, still they have been very large and extensive. The candidates for election have been unknown to nine-tenths of the electors, they have never been heard of, until their names were announced for their choice; and when we superadd to this, that the state for a long period has been rent and torn by faction—that party spirit has pervaded the whole community—that active, and ambitious, and restless individuals have assumed the direction and control of elections, it is not to be wondered at, that the senate has not been such as the framers of the constitution contemplated; for the question put by the electors as to the qualifications of candidates, has not been whether they were wise, or good, or virtuous, but what are their politics, and under whose banner are they enrolled?

This deplorable state of things, which has disgraced us as a people and a state, will no longer exist, if we adopt and improve the report of the legislative committee in subdividing the state, not only into seventeen, but as I fervently hope, into thirty-two electoral districts for senators. Then the anticipation and wisdom of those immortal patriots, whose labours we are now revising, will appear; then the electors and the elected will become known to each; then we may hope to see our senate what it ought to be, the council of ancients, composed of great, wise, good, and grave men.

Those, Mr. Chairman, who suppose that a sound branch of the legislature, the senate, was intended merely as a check upon the first, (the assembly) appear to me to have misunderstood its organization and design. It was intended to be differently composed and differently organized for other purposes, than a mere second branch of legislation.

The objects of government are the protection of life, liberty, and property. These are important and paramount rights; and every wise frame of government will extend its protecting care over all and each of them.

The assembly, consisting of greater numbers, elected by all the sound and wholesome part of the adult male population of the state, is more emphatically charged with the protection and preservation of the personal rights, the lives and liberties of the citizens.—The senate was intended as the guardians of our property generally, and especially of the landed interest, the yeomanry of the state.

I shall ask leave of the committee, sir, to submit to them the ideas of an illustrious statesman, now no more. I have heard with great pleasure an eulogy pronounced on another occasion, on the deceased Gen. Hamilton—It met my most hearty approbation. Now that he is entombed, we can do justice to his memory without incurring envy or reproach. For profundity of thought, for purity of intention, for depth of research, and clearness of investigation, none excelled him; and I may say with truth, that his name and his works have added lustre and honour to our nation. In the 62d number of the Federalist, attributed to his pen, and undoubtedly his own, in speaking of the organization of the senate of the United States, he says: "It is a misfortune, incident to republican government, though in a less degree than to other governments, that those who administer it, may forget their obligations to their constituents, and prove unfaithful to their important trust.—In this point of view a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with a first, must be in all cases a salutary check on the government. It doubles the security of the people, by requiring the concurrence of two distinct bodies in schemes of corruption, or perfidy, where the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that *as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government.*"

Here is a distinct admonition that a dissimilarity in the *genius* of the two legislative branches, adds to the security of the people. But we are not without another high authority from a most distinguished source. The opinions of Mr. Jefferson have been read to the Convention, on a former question, by a member from Otsego; that great man, though alive, and living in dignified and philosophic retirement, may be considered as much withdrawn from the contentions and strifes of the world, as if he were entombed—He has given us a precise and distinct avowal of his matured opinion on this interesting point. In his Notes on Virginia, he has discussed the imperfections of their constitution, and given to the world the substance of a constitution, which he wished to see adopted in his native state. In speaking of the senate under the existing government, he says:—"The senate is by its constitution, too homogeneous with the house of delegates; being chosen by the same electors, at the same time, and out of the same subjects, the choice falls of course *on men of the same description. The purpose of establishing different houses of legislation is to introduce the influence of different interests or different principles.*"

Can there be a plainer, or more self-evident proposition, as applied to the private transactions of men; than if an individual, having great and interesting concerns, found it necessary to appoint two agents to manage those concerns, as guards and checks against the dishonesty or the defective judgment of the one, would he appoint two precisely similar in their feelings, judgments, motives, and habits? Or, if wise, would he not select men possessing different qualities, that thus he might combine every thing essential to the promotion and preservation of his own interests? If the agents were exactly alike, moved by the same impulses, having an identity of qualifications, in effect he would have but one agent, and his precaution of checks would be nugatory.

In my judgment, sir, there are other and mightier considerations still, in favour of the proposition which I have submitted. From the vast extent of this state, from the fertility of its soil, and the salubrity of its climate, we are destin-

ed, under a free and wise government, to increase in a ratio incalculable. This state, within a century, must contain a population of many millions. Are we amending our constitution to last our own lives only? Are we establishing fundamental principles for this and the next generation only ? No, sir. If we are wise, we must take a prospective view, and we must endeavour, as far as humanity will allow, to impress on our doings the seal of immortality—We must fashion our constitution to suit the present and future times. In this view, as we have repeatedly been admonished upon this floor, we must contemplate, that the condition of the community will change, that other interests will spring up; that we are to become a manufacturing state ; that commerce and the mechanical arts will be widely and extensively established. At present the agricultural interest predominates ; but who can foresee, that in process of time, it will not become the minor body ? And what is there to protect the landed interests of the state, the cultivators of the soil, if the wide and broad proposition on your table be adopted ; admitting the whole mass of the adult male population of the state to vote not only for governor, lieutenant-governor, and assembly, but senators also ? He would venture to predict, that the landed interests of the state will be at the mercy of the other combined interests ; and thus all the public burthens may be thrown on the landed property of the state.

It may be said that the smallness of the number, and the duration of the office of senators for four years, will give the requisite dissimilarity between the two branches, and thus obviate the necessity of a distinction in the qualification of the electors. This he conceived to be a mistake. The duration of the office may make the senators somewhat more independent, but it can neither alter nor change the identity of their composition ; and the smallness of the number can have no other effect than to promote a more familiar discussion.

However subdivided the legislature may be in its several branches, if it be composed of persons exactly similar in qualifications, and be elected by persons having the same qualifications, it will be virtually one and the same body. Put one body in an upper house, the other in a lower house ; call one lords, and the other commons, it avails nothing ; they are but one body, possessing the same feelings, the same sympathies, and the same objects. It was a conviction of this immutable truth, which led the framers of our constitution to establish a difference in the qualification of the electors ; and I may confidently appeal to the intelligence of this Convention, that hitherto its operation has not been injurious to the interests of society ; on the contrary, we have lived securely, we have enjoyed every protection, and we have prospered beyond example.

Let me ask, sir, whether this great, this radical, this fundamental change, which goes to break down a barrier of our constitution, has been demanded by the sober sense of this community ? I again say, that I have no knowledge of any disposition existing to any considerable extent, to make this deep, and, as I firmly believe, dangerous innovation.

Is it desirable that we should remove the safeguards of property, and destroy the incentive to acquire it, by rendering it insecure. By removing these guards, we repress industry, frugality, temperance, and all those exertions to the acquisition of landed property, which make good citizens. Are we jealous of property, that we should leave it unprotected ? To the beneficence and liberality of those who have property, we owe all the embellishments and the comforts and blessings of life. Who build our churches, who erect our hospitals, who raise our school houses ? Those who have property. And are they not entitled to the regard and fostering protection of our laws and constitution ? Let me not be suspected of a disposition to infringe or curtail the rights of any portion of the community. I would impart the right of electing the assembly, the most numerous branch of legislation, to every man whom we believe will exercise the right with independence and integrity ; and thus the rights of every portion of the people will be protected. I have said on a former occasion, that the rule adopted must necessarily be a general rule ; but let us take care, whilst we nominally give the right of voting to a particular description of our citizens, that we do not in reality give it to their employers. The man who feeds, clothes, and lodges another, has a real and absolute control over his will. Say what we may,

the man who is dependant on another for his subsistence, is not an independent man, and he will vote in subservience to his dictation. Let us, then, take care, whilst we abominate aristocracy, that we do not actually organize it, by giving to the rich an undue influence, and by creating venal votes to be bought.

Here it would be profitable to look to that country from which most of us are derived; I mean England. Independently of the rotten boroughs, which send fifty or sixty members to parliament, and which are owned by individuals, there are districts containing from one hundred to five hundred electors, and sending upwards of one hundred members to the house of commons, who notoriously and publicly buy their seats, by different modes of corruption and bribery. In some places the electors have long been habituated unblushingly to receive for their votes a fixed and standard price. In others, it is managed with more decency; but the corruption is gross and palpable; and who has not heard, and read, of the tumults, the riots, the mobs, and the murders attending their elections? At no very remote period, when luxury and vice shall have extended their empire among us, as they assuredly will, may we not expect, if we admit the mass of our adult male population to vote for every branch of the government, to see these disgusting scenes acted among us?

Ought not these considerations to induce us as wise men, to endeavour to preserve to the landed interest of the country, one branch of the legislature, by adhering to the principles established by our fathers, and sanctified by experience?

Mr. S. said he was aware that he might be misunderstood and misrepresented; for this he had no anxiety; he had endeavoured to act according to the dictates of his best judgment, and he had the approval of his conscience. We had a record, and on that imperishable evidence, he should be willing to transmit to future ages, his vote on this solemn and important occasion.

Chancellor Kent. I am in favour of the amendment which has been submitted by my honourable colleague from Albany; and I must beg leave to trespass for a few moments upon the patience of the committee, while I state the reasons which have induced me to wish, that the senate should continue, as heretofore, the representative of the landed interest, and exempted from the control of universal suffrage. I hope what I may have to say will be kindly received, for it will be well intended. But, if I thought otherwise, I should still prefer to hazard the loss of the little popularity which I might have in this house, or out of it, than to hazard the loss of the approbation of my own conscience.

I have reflected upon the report of the select committee with attention and with anxiety. We appear to be disregarding the principles of the constitution, under which we have so long and so happily lived, and to be changing some of its essential institutions. I cannot but think that the considerate men who have studied the history of republics, or are read in lessons of experience, must look with concern upon our apparent disposition to vibrate from a well balanced government, to the extremes of the democratic doctrines. Such a broad proposition as that contained in the report, at the distance of ten years past, would have struck the public mind with astonishment and terror. So rapid has been the career of our vibration.

Let us recall our attention, for a moment, to our past history.

This state has existed for forty-four years under our present constitution, which was formed by those illustrious sages and patriots who adorned the revolution. It has wonderfully fulfilled all the great ends of civil government. During that long period, we have enjoyed in an eminent degree, the blessings of civil and religious liberty. We have had our lives, our privileges, and our property, protected. We have had a succession of wise and temperate legislatures. The code of our statute law has been again and again revised and corrected, and it may proudly bear a comparison with that of any other people. We have had, during that period, (though I am, perhaps, not the fittest person to say it) a regular, stable, honest, and enlightened administration of justice. All the peaceable pursuits of industry, and all the important interests of education and science, have been fostered and encouraged. We have trebled our numbers within the last twenty-five years, have displayed mighty resources, and have made unexampled progress in the career of prosperity and greatness.

Our financial credit stands at an enviable height; and we are now successfully engaged in connecting the great lakes with the ocean by stupendous canals, which excite the admiration of our neighbours, and will make a conspicuous figure even upon the map of the United States.

These are some of the fruits of our present government; and yet we seem to be dissatisfied with our condition, and we are engaged in the bold and hazardous experiment of remoddelling the constitution. Is it not fit and discreet: I speak as to wise men; is it not fit and proper that we should pause in our career, and reflect well on the immensity of the innovation in contemplation? Discontent in the midst of so much prosperity, and with such abundant means of happiness, looks like ingratitude, and as if we were disposed to arraign the goodness of Providence. Do we not expose ourselves to the danger of being deprived of the blessings we have enjoyed?—When the husbandman has gathered in his harvest, and has filled his barns and his graneries with the fruits of his industry, if he should then become discontented and unthankful, would he not have reason to apprehend, that the Lord of the harvest might come in his wrath, and with his lightning destroy them?

The senate has hitherto been elected by the farmers of the state—by the free and independent lords of the soil, worth at least $250 in freehold estate, over and above all debts charged thereon. The governor has been chosen by the same electors, and we have hitherto elected citizens of elevated rank and character. Our assembly has been chosen by freeholders, possessing a freehold of the value of $50, or by persons renting a tenement of the yearly value of $5, and who have been rated and actually paid taxes to the state. By the report before us, we propose to annihilate, at one stroke, all those property distinctions and to bow before the idol of universal suffrage. That extreme democratic principle, when applied to the legislative and executive departments of government, has been regarded with terror, by the wise men of every age, because in every European republic, ancient and modern, in which it has been tried, it has terminated disastrously, and been productive of corruption, injustice, violence, and tyranny. And dare we flatter ourselves that we are a peculiar people, who can run the career of history, exempted from the passions which have disturbed and corrupted the rest of mankind? If we are like other races of men, with similar follies and vices, then I greatly fear that our posterity will have reason to deplore in sackcloth and ashes, the delusion of the day.

It is not my purpose at present to interfere with the report of the committee, so far as respectsthe qualifications of electors for governor and members of assembly. I shall feel grateful if we may be permitted to retain the stability and security of a senate, bottomed upon the freehold property of the state. Such a body, so constituted, may prove a sheet anchor amidst the future factions and storms of the republic. The great leading and governing interest of this state, is, at present, the agricultural; and what madness would it be to commit that interest to the winds. The great body of the people, are now the owners and actual cultivators of the soil. With that wholesome population we always expect to find moderation, frugality, order, honesty, and a due sense of independence, liberty, and justice. It is impossible that any people can lose their liberties by internal fraud or violence, so long as the country is parcelled out among freeholders of moderate possessions, and those freeholders have a sure and efficient control in the affairs of the government. Their habits, sympathies, and employments, necessarily inspire them with a correct spirit of freedom and justice; they are the safest guardians of property and the laws: We certainly cannot too highly appreciate the value of the agricultural interest: It is the foundation of national wealth and power. According to the opinion of her ablest political economists, it is the surplus produce of the agriculture of England, that enables her to support her vast body of manufacturers, her formidable fleets and armies, and the crowds of persons engaged in the liberal professions, and the cultivation of the various arts.

Now, sir, I wish to preserve our senate as the representative of the landed interest. I wish those who have an interest in the soil, to retain the exclusive possession of a branch in the legislature, as a strong hold in which they may find safety through all the vicissitudes which the state may be destined, in the course

of Providence, to experience. I wish them to be always enabled to say that their freeholds cannot be taxed without their consent. The men of no property, together with the crowds of dependants connected with great manufacturing and commercial establishments, and the motley and undefinable population of crowded ports, may, perhaps, at some future day, under skilful management, predominate in the assembly, and yet we should be perfectly safe if no laws could pass without the free consent of the owners of the soil. That security we at present enjoy; and it is that security which I wish to retain.

The apprehended danger from the experiment of universal suffrage applied to the whole legislative department, is no dream of the imagination. It is too mighty an excitement for the moral constitution of men to endure. The tendency of universal suffrage, is to jeopardize the rights of property, and the principles of liberty. There is a constant tendency in human society, and the history of every age proves it; there is a tendency in the poor to covet and to share the plunder of the rich; in the debtor to relax or avoid the obligation of contracts; in the majority to tyranize over the minority, and trample down their rights; in the indolent and the profligate, to cast the whole burthens of society upon the industrious and the virtuous; and *there is a tendency in ambitious and wicked men, to inflame these combustible materials.* It requires a vigilant government, and a firm administration of justice, to counteract that tendency. Thou shalt not covet; thou shalt not steal; are divine injunctions induced by this miserable depravity of our nature. Who can undertake to calculate with any precision, how many millions of people, this great state will contain in the course of this and the next century, and who can estimate the future extent and magnitude of our commercial ports? The disproportion between the men of property, and the men of no property, will be in every society in a ratio to its commerce, wealth, and population. We are no longer to remain plain and simple republics of farmers, like the New-England colonists, or the Dutch settlements on the Hudson. We are fast becoming a great nation, with great commerce, manufactures, population, wealth, luxuries, and with the vices and miseries that they engender. One seventh of the population of the city of Paris at thisday subsists on charity, and one third of the inhabitants of that city die in the hospitals; what would become of such a city with universal suffrage? France has upwards of four, and England upwards of five millions of manufacturing and commercial labourers without property. Could these kingdoms sustain the weight of universal suffrage? The radicals in England, with the force of that mighty engine, would at once sweep away the property, the laws, and the liberties of that island like a deluge.

The growth of the city of New-York is enough to startle and awaken those who are pursuing the *ignis fatuus* of universal suffrage.

In 1773	it had	21,000	souls.
1801	"	60,000	do.
1806	"	76,000	do.
1820	"	123,000	do.

It is rapidly swelling into the unwieldly population, and with the burdensome pauperism, of an European metropolis. New-York is destined to become the future London of America; and in less than a century, that city, with the operation of universal suffrage, and under skilful direction, will govern this state.

The notion that every man that works a day on the road, or serves an idle hour in the militia, is entitled as of right to an equal participation in the whole power of the government, is most unreasonable, and has no foundation in justice. We had better at once discard from the report such a nominal test of merit. If such persons have an equal share in one branch of the legislature, it is surely as much as they can in justice or policy demand. Society is an association for the protection of property as well as of life, and the individual who contributes only one cent to the common stock, ought not to have the same power and influence in directing the property concerns of the partnership, as he who contributes his thousands. He will not have the same inducements to care, and diligence, and fidelity. His inducements and his temptation would be to divide the whole capital upon the principles of an agrarian law.

Liberty, rightly understood, is an inestimable blessing, but liberty without

wisdom, and without justice, is no better than wild and savage licentiousness. The danger which we have hereafter to apprehend, is not the want, but the abuse, of liberty. We have to apprehend the oppression of minorities, and a disposition to encroach on private right—to disturb chartered privileges—and to weaken, degrade, and overawe the administration of justice; we have to apprehend the establishment of unequal, and consequently, unjust systems of taxation, and all the mischiefs of a crude and mutable legislation. A stable senate, exempted from the influence of universal suffrage, will powerfully check these dangerous propensities, and such a check becomes the more necessary, since this Convention has already determined to withdraw the watchful eye of the judicial department from the passage of laws.

We are destined to become a great manufacturing as well as commercial state. We have already numerous and prosperous factories of one kind or another, and one master capitalist with his one hundred apprentices, and journeymen, and agents, and dependents, will bear down at the polls, an equal number of farmers of small estates in his vicinity, who cannot safely unite for their common defence. Large manufacturing and mechanical establishments, can act in an instant with the unity and efficacy of disciplined troops. It is against such combinations, among others, that I think we ought to give to the freeholders, or those who have interest in land, one branch of the legislature for their asylum and their comfort. Universal suffrage once granted, is granted forever, and never can be recalled. There is no retrograde step in the rear of democracy. However mischievous the precedent may be in its consequences, or however fatal in its effects, universal suffrage never can be recalled or checked, but by the strength of the bayonet. We stand, therefore, this moment, on the brink of fate, on the very edge of the precipice. If we let go our present hold on the senate, we commit our proudest hopes and our most precious interests to the waves.

It ought further to be observed, that the senate is a court of justice in the last resort. It is the last depository of public and private rights; of civil and criminal justice. This gives the subject an awful consideration, and wonderfully increases the importance of securing that house from the inroads of universal suffrage. Our country freeholders are exclusively our jurors in the administration of justice, and there is equal reason that none but those who have an interest in the soil, should have any concern in the composition of that court. As long as the senate is safe, justice is safe, property is safe, and our liberties are safe. But when the wisdom, the integrity, and the independence of that court is lost, we may be certain that the freedom and happiness of this state, are fled forever.

I hope, sir, we shall not carry desolation through all the departments of the fabric erected by our fathers. I hope we shall not put forward to the world a new constitution, as will meet with the scorn of the wise, and the tears of the patriot.

Gen. Root. I rejoice that this proposition has presented itself distinctly to the committee, and hope that its rejection may be had in a plain and unequivocal manner. It divides itself into two branches.—1st. Whether the senate and assembly ought to be elected by different persons, so as to possess genius and feelings hostile to each other; and, 2dly. Whether it is properly provided for by the amendment that is now proposed.

That these two branches should be so organized as to possess different genius, the honourable gentleman from Albany (Mr. Spencer) has referred to the writings of illustrious statesmen to prove. I have no objection to hear eulogies upon departed statesmen and illustrious individuals. But however justly those eulogies may be pronounced in respect to personal worth, I do not feel that the people of this state are to regard their opinions with the reverence due to holy writ. I am not disposed to detract from the merits of the illustrious Hamilton. But I do desire, that we may not be carried away by speculations, merely because they were advanced by eminent men. Sir Robert Walpole and William Pitt the younger, were great and illustrious men; but we all know that their doctrines were hostile to liberty, and however suitable for a monarchical government, were not at all calculated for a republican or democratic people. And if

Mr. Hamilton had entertained the views that now animate the people of this state, would he have proposed in the Convention of the United States, that the governors of the several states should all be appointed by the supreme executive? Sir, I very well remember that when I had the honour to think and act on political subjects with the gentleman from Albany, although we respected the character and talents of Mr. Hamilton, neither of us respected his political opinions or his writings.

But why must the two branches of the legislature be composed of different genius and heterogeneous materials? To constitute a sufficient check, says the gentleman:—and so, for this purpose, it must consist of discordant elements! Is this the way that government should be constituted? That the different branches, instead of harmonious movement, should be set in hostile array against each other? The honourable gentleman has adverted to the case of an individual employing two agents for the transaction of his business. Sir, I want no better example to illustrate my views of the subject, and to deduce a consequence directly the reverse of that which he has drawn. Were I that individual, I would choose men who might act in unison, and counsel each other upon the subject matter of their agency. If they possessed different tempers—opposite opinions, and hostile feelings, could I expect that the agency would be well managed?—Would not my interests be lost sight of, in their distractions and animosities? What government ever sent two ministers to negociate a treaty, and selected them for their known hostility to each other?

I agree that in a monarchical government, where little liberty is left to the people, it is necessary to have such checks as gentlemen have described. In such governments there are different *orders*, as lords and commons in England; different *estates*, as in the diets of Sweden, Denmark, and Germany. But the necessity in those governments bears no analogy to ours.—We have no different estates, having different interests, necessary to be guarded from encroachment by the watchful eye of jealousy.—We are all of the same estate—all commoners; nor, until we have privileged orders, and aristocratic estates to defend, can this argument apply.

But it is urged that this different genius of the senate is necessary to protect the landed interest:—to prevent the mob, the rabble, or the *radicals*, as they would be called in England, from laying a tax on the lands of the rich, and not on their own—when gentlemen say they have got none! This argument destroys itself.

But the honourable gentleman from Albany, (Mr. Spencer) is apprehensive that we shall encourage aristocracy by enabling the manufacturer to control the votes of the hundred men he employs. The argument is—you must raise up and protect aristocracy in the senate---for what purpose? To avoid aristocracy! But does the gentleman suppose that this powerful manufacturer is not connected with the landed interest? Is not the manufactory itself real estate? And will he be disposed to break down real estate, who has such a powerful interest to support it?

But another honourable gentleman (Mr. Kent) has said, that the senate must be preserved, because it is our dernier resort as a court of justice. It must be protected, to preserve the judiciary from falling a sacrifice to those whose pursuits are commerce and manufactures. But will not these classes feel as strong an interest in sustaining them, as the farmer back in the woods? Have they not more frequent occasion to resort to them for the protection of their rights?

In relation to the second branch of the inquiry, it seems to be admitted, that heretofore the senate, although elected by freeholders, has not possessed a superiority, in any respect, over the other branch of the legislature; but the fault is laid on the size of the four great districts; and now that the state is to be divided into seventeen senatorial districts, faction will hide its hated head. I agree, sir, that the time has been, that senators in the western district *may have* derived their nomination from the city of Albany.

By the plan that is now offered, freeholders, those having a clear, equitable right, of the value of $250 are to be allowed to vote for senators. How are the qualifications of these *equitable freeholders*, as they have been nicknamed, to be

ascertained? Shall it be referred to their own oaths? This is a dangerous temptation to perjury, and the honourable member (Mr. Spencer) has more than once opposed any provision that should allow a man to qualify himself by his own oath. Shall it then be determined by the chancellor? Sir, I am not yet prepared to refer to that, or any other officer, however respectable, the power to control and determine the suffrages of the people.

I admit, that such persons should be enabled to vote for senators; but I am not willing that they should wade through uncertainty, if not perjury, to attain it.

The balance of the different branches of the government has been a theme of warm admiration. It has been likened to a beautiful pyramid, of which the king was the apex, the people the base, and the aristocracy in the centre, that is, between the head and the tail. I am not disposed to carry my admiration so far as to place the people's governor at the top, the people's legislature at the bottom, and an aristocratic senate, between two fires, in the middle. However pleasant the theory may be, it is incompatible with the genius of our government. These powerful checks may be necessary between different families, possessing adverse interests, but can never be salutary among brothers of the same family, whose interests are similar. Look at past experience. Has not the senate, although elected by freeholders, been as democratic as the other branch? Give them a longer term of service, which will enable them to quell any mad passions that may be excited in the popular branch; and their fewer numbers will enable them more easily to correct any hasty and unadvised legislation of the assembly; and these are the only wholesome and necessary checks that the nature of our government requires.

Mr. P. R. Livingston had hoped, that the subject would not pass the Convention without a more thorough examination. As a member of the select committee he had acquiesced in the report, and had not yet been convinced that the positions they had taken were erroneous.

He was well persuaded, that every member of the convention was a friend to property, and to the landed interest. But he thought that the views of some gentlemen, if adopted, were not calculated to advance the cause of civil liberty.

Allusions had been made to the formation of the constitution under which we live; and what was the first feature in our remonstance against the usurpations of Britain? Was it not that taxation and representation were reciprocal; and that no imposition could be laid upon us without our consent? Was it the paltry tax on tea that led to the revolution? No, sir; it was the *principle*, for which we contended: and the same principle, in my judgment, requires a rejection of the proposition now on your table. But we are asked, what evidence we have that the people want this extension of suffrage? Sir, 74,000 witnesses testified, last spring, that they wanted it. Meetings and resolutions, public prints, and conversation have united to require it.

It is concluded, however, that the measure proposed by the original amendment jeopardizes the landed interest. Sir, it is the landed interest, in common with others, that have demanded this measure at our hands: and will they resort to projects which are calculated to injure ourselves? France has been alluded to. The French revolution, sir, has produced incalculable blessings to that country. Before that revolution one third of the property of the kingdom was in the hands of the clergy; the rest in the hands of the nobility. Where the interest of one individual has been sacrificed, the interests of thousands have been promoted. After dining with that friend of universal liberty, the patriotic La Fayette, he once invited me to a walk upon the top of his house, that commanded a view of all the surrounding country. Before the revolution, said he, all the farms and hamlets you can see were mine. I am now reduced to a thousand acres, and I exult in the diminution, since the happiness of others is promoted by participation.

This, sir, is the language of true patriotism; the language of one whose heart, larger than his possessions, embraced the whole family of man in the circuit of its beneficence. And shall we, with less ample domains, refuse to our poorer neighbours the common privileges of freemen?

But, sir, we are told and warned of the rotten boroughs of England. By

whom are they owned? By men of wealth. They confer the right of representation on the few, to the exclusion of the many. They are always found in the views of the monarch; and while aristocracy is supported by the house of lords, the house of commons is borne down by the boroughs.

It is said that wealth builds our churches, establishes our schools, endows our colleges, and erects our hospitals. But have these institutions been raised without the hand of labour? No, sir; and it is the same hand that has levelled the sturdy oak, the lofty pine, and the towering hemlock, and subdued your forests to a garden. It is not the fact, in this country, that money controls labour; but labour controls money. When the farmer cradles his wheat and harvests his hay, he does not find the labourer on his knees before him at the close of the day, solicitous for further employment; but it is the farmer who takes off his hat, pays him his wages, and requests his return on the morrow.

Apprehensions are professed to be entertained, that the merchant and manufacturer will combine to the prejudice of the landed interest. But is not agriculture the legitimate support of both? And do gentlemen really suppose that they will madly combine to destroy themselves? If the title to land contributed to the elevation of the mind, or if it gave stability to independence, or added wisdom to virtue, there might be good reason for proportioning the right of suffrage to the acres of soil. But experience has shewn that property forms not the scale of worth, and that character does not spring from the ground. It seems, indeed, to be thought, that poverty and vice are identified. But look to the higher classes of society. Do you not often discover the grossest abuse of wealth? Look to the republics of Greece. They were all destroyed by the wealth of the aristocracy bearing down the people.

And how were the victories of Greece achieved in her better days? By the militia. How were the liberties of Rome sustained? By her militia. How were they lost? By her standing armies. How have we been carried triumphantly through two wars? By the militia—by the very men whom it is now sought to deprive of the inestimable privilege of freemen. And whom do you find in your armies in time of war? The miser? The monied Shylock? The speculator? No, sir; it is the poor and hardy soldier who spills his blood in defence of his country; the veteran to whom you allow the privilege to fight, but not to vote. If there is value in the right of suffrage, or reliance to be placed upon our fellow citizens in time of war, where, I ask, is the justice of withholding that right in times of peace and safety?

Mr. Radcliff was not in the habit of declaiming on popular rights, but he thought there should be an equality, whatever qualifications might be fixed on.

He was opposed to the proposition now under consideration, because he could perceive no utility that was likely to grow out of its adoption; and if useless, it was of course injurious. Propositions of an affirmative character, ought always to be accompanied by proofs of their probable utility.

Gentlemen have referred to the theories of learned statesmen; but Mr. R. thought it would be found that those theories rested upon no better basis than speculative opinion, or analogies derived from countries, between which and our own, there is no relation. We know that those statesmen were mistaken on some important points. They said our government would vanish in twenty years, that it did not possess intrinsic strength, adequate to its support. But forty years experience has shewn us the fallacy of their predictions.

Property will always carry with it an influence sufficient for its own protection. And shall we give it an artificial aid, that may be dangerous to the rights of the community? But we are told that property is entitled to representation. If the principles of the social compact are likened to a partnership stock, it follows that each partner is entitled to vote according to the amount of his state in that partnership, like shares in a monied institution:—of course upon the ratio of $250 proposed by the mover of the amendment under consideration, every freeholder having $500 worth of property would be entitled to two votes, and if he has $5000 worth he would be entitled to twenty votes.

The weight of character, and talents, and property in the senate, Mr. R. remarked, had not been greater than in the Assembly; and the experience of the Eastern states, where no such odious distinction existed, and where we always

direct our eyes when in the pursuit of wisdom, had evinced that no danger was to be feared from adopting the amendment of the honourable gentleman from Delaware. It would therefore receive his support.

Mr. Van Vechten. I rise with great diffidence to support the amendment moved by my honourable colleague (Mr. Spencer;) but the importance of the principle which it involves, imposes upon me the duty of expressing my sentiments upon the subject to the committee. In doing this, I shall not attempt to travel over the same ground which has been so ably occupied by my two honourable colleagues (Messrs. Kent and Spencer) who have gone before me. It will be my purpose to shew, with as much brevity and simplicity as I am capable, that the amendment is founded in the true principles of our free representative government—a fair representation of the governed, so arranged as to ensure equal protection and security to the rights of all. I am aware that the question, how this important end is most certainly attainable, is not without its difficulties. But it is a conceded point, that the accountability of representatives, at stated periods, to those by whom they are chosen, is an essential means to its attainment, as it brings the former to the bar of the latter, at those periods, for a free examination into their public conduct, upon the result of which depends their continuance in, or dismissal from their trust. This incites men, who are ambitious to obtain and hold representative stations, to exert all their powers and faculties to merit and preserve the confidence of their constituents, by a faithful discharge of public duties. It is a fact which must be admitted on all sides, that in every community, the people have some rights which are common to all, and others which are separate. Let me illustrate my meaning by specific examples—Life and liberty are common to all, but the possession of property is not. Hence the owners of property have rights which, in relation to those who are destitute, are separate and exclusive. It is the duty of a just government to extend the same protection to the latter as to the former; and thence it follows, that a fair representation of every class of citizens in the administration of government, requires that the right of suffrage should be so arranged, as to give due weight to property, as well as to personal rights. What is the most expedient and safe arrangement, according to the true principles of a representative government, is a point upon which eminent statesmen may, and do, honestly differ in opinion. The sages and patriots who framed our constitution, considered it just and wise to divide the legislature into two separate bodies, with equal powers; the one numerous, and to be chosen by the whole mass of electors: the other comparatively small in number, and to be chosen by the landholders of the state. It will be seen that the distribution of the legislative power, and the right of suffrage, secures practically to every class of citizens, the benefits of a fair representation in the legislature with reference to their respective rights; and the experience of near half a century has proven, that those constitutional provisions are wise and salutary. The rights of property not only, but personal rights, have been secure, and we have prospered to an unexampled degree. It is true that within a few years we have heard a great deal said about the necessity of calling a Convention to revise and amend the constitution; but it is equally true, that this has arisen more from violent party collisions, than from any real dissatisfaction in relation to our constitutional provisions, with a single exception as to the mode of appointment to office.

The object of the amendment under consideration, is to continue the freehold qualification of electors for senators, and to extend it to equitable freeholders, which will include a numerous and valuable class of electors who have heretofore been excluded. Is this unjust or unreasonable? I apprehend not. The landed interest of the state, on account of its stability and importance, is, in my judgment, entitled to distinct weight in the choice of at least one branch of the legislature. Let me ask the committee, whether any other property is so completely within the reach of, and affords such substantial security to, the government? Is there any other solid pledge remaining, to which the creditors of the state look with equal confidence for the fulfilment of its plighted faith? Is there any other property which contributes in an equal proportion, towards the public expenses in the way of direct taxation? Its immoveable and imperishable quality makes it always secure and tangible, and renders its value easi-

ly ascertainable, while a very great mass of personal property eludes the eye of the assessor and the hand of the collector, and the whole is perishable and transitory. Besides, the peaceable, frugal, and industrious habits of the owners and cultivators of our soil, exclude them from direct participation in the schemes of ambition, and the unhallowed courses which are not unfrequently pursued for its gratification.

But several objections have been urged by gentlemen on the other side of the question, against the amendment before us. I must, therefore, solicit the indulgence of the committee while I examine those objections in detail.

It has been said by the gentleman from New-York (Mr. Radcliff) that the amendment is incompatible with the principle of equal rights, upon which our present constitution professes to be founded. I deny that such incompatibility exists. What is the true meaning of equal rights in relation to government? It is, that every citizen has equal claims to protection for his rights, whatever they may be. Does it follow thence that a man who has only life and liberty to be protected, needs protection to the same extent with one who, in addition to life and liberty, possesses both real and personal property? No. The equal right of the former is satisfied when he is protected in what he enjoys, but the protection of the latter must be co-extensive with his multifarious rights, to place him on a footing of equality with the other, as respects the objects for which government is instituted. No man can justly complain of inequality in the protection which he receives from government, when it protects all that he possesses; nor is any one without just cause of complaint on this head, when any portion of his rights are left insecure and unprotected. How, then, does the amendment under discussion conflict with the principle of equal rights, as applicable to government? On the contrary, is it not calculated to give to that just and wholesome principle its true practical effect? All the rights of the most numerous class of electors will be represented by men of their own choice in the assembly—men who will be accountable to them at the close of every year, for the manner in which they have executed their trust; nor can any law be passed that will impair their rights, without the concurrence of the assembly. The other class of electors, by whom it is proposed that the senators shall be chosen, will consist of the owners of land. Is it asked why? I answer, because the mass of electors for the assembly will not be landholders, and therefore will have no direct interest in the protectien of landed property. And inasmuch as their rights are secured by a fair and full representation in the assembly selected by themselves, it is just and reasonable that the rights of the freeholders should be made equally secure by means of their own chosen representatives in the senate. If there is any soundness in the doctrine of a representative government, that the accountability of representives to their immediate constituents, by means of frequent elections, conduces to the security of the latter, the conclusion to which it leads seems to be irresistible in favour of the proposition before us. But by way of further illustration, I will contrast the gentleman's notion of equal rights, or, as it has been called, the doctrine of equality in the right of suffrage, with the amendment in question. By the report of the select committee, which he approves, it is proposed that " every male citizen of the age of twenty-one years, who shall have resided six months within this state next preceding any election, and shall within one year previous to such election, have paid a tax assessed upon him, or shall within the same period have been assessed to work on a public road, and shall have performed the work, or shall have paid an equivalent therefor in money, or shall within the same period have been enrolled in the militia, and shall have served therein, shall be a qualified voter for governor, lieutenant-governor, senators and members of assembly."

The amendment offered by the gentleman from Delaware, so far as it is material to the present discussion, proposes to extend the term of residence, and to superadd equipment according to law to the militia enrolment and service, in order to qualify such voter. What will the effect be, whichever proposition prevails? A man who has worked one day on a highway, or is an equipped militia man, who has resided within the state during six months in one case, and one year in the other, will be a qualified voter for senators, who are to protect the landed interest of the state in the senate. Let me ask the members of the com-

mittee, whether this savours of equality of representation in the legislature as respects the landholders? Perhaps it will be said, that the freehold electors will have a right in common with the other electors, to vote for both branches of the legislature; but will any gentleman tell me in what character the freeholders will possess that right? It is not given to them in the character of freeholders, for the ownership of land per se is not recognized, in either of the propositions last mentioned, as a legitimate qualification for an elector. Nay, according to those propositions, if a man settles within this state five months previously to an election, and becomes the absolute owner of a freehold of the value of twenty-five thousand dollars, for which the former owner has paid the tax during the then current year, he will not be a legal voter. It would seem that in the estimation of the select committee, as well as in the opinion of the gentleman from Delaware, actual residence and a freehold interest in land, is a less meritorious qualification for an elector of members of the legislature, than a naked, casual residence of six months or a year, connected with the payment of a tax of six cents, or a day's work on the highway, or an hour's parade in the ranks of the militia, accoutred in the manner prescribed by law for a citizen soldier. It is true, that the landholders who pay taxes, and I believe there are none who do not, will have a right to vote for members of both houses of the legislature; but it should be remembered that our farmers have cattle and other personal property on their farms, which is not the less visible and tangible by the government, for being a necessary appendage to their farms, and which is never forgotten or overlooked by the assessors and collectors. Let us, then, place their participation in the choice of the members of assembly to the account of their personal property; and let it be conceded that such participation gives them a fair representation in the legislature as far as relates to life, liberty, and personal property.—What becomes of their landed interest? How is that represented? Is it by an equal vote for personal property, personal services, and pecuniary contributions with other electors, who own no real estate, and whose numbers will always exceed the landholders? Is this equality according to the true principles of a representative government? Does it place the landholders of the state upon an equal footing with the other electors? Will this equality, as to the right of suffrage for members of the legislature, assure to the landholders even-handed justice, when legislative systems of taxation are to be devised and put into operation? Are there no conflicting interests between the holders of real and personal property on such occasions? And ought it to be dissembled, that in such conflicts, the predominant influence in elections will never be forgotten by those who depend upon that influence for their seats in the legislature?

The gentleman from Dutchess, (Mr. Livingston) seems to suppose that the freehold voters constitute at present two-thirds of the whole number of electors. Be it so: will the gentleman venture to assert that the proposed extension of the right of suffrage will not change the difference of two-thirds in favour of the electors who are destitute of freeholds? In that event, what weight will the freehold interest of the state have in the scale of elections? Will not the choice of those who are to legislate for the landholders, rest with that class of electors who have no interest in real property? And will that afford the benefit of an equal representation in the legislature to the owners of land? May I be permitted to illustrate my argument by anticipating the result of the proposed extension of the right of suffrage in the city of New-York?

The average of the present senatorial votes taken in that city, is about four thousand, and when the proposed extension takes effect, their numbers will be increased more than three fold. What their increase will be in the course of ten or twenty years, who can tell? Then, who will undertake to say that real property will remain constitutionally secure, for twenty years to come, under the operation of the proposed extension of the right of suffrage? Again, sir: admit for argument's sake, that the freehold voters constitute a large majority of our present electors, is that a sound reason for divesting them of the right which the constitution gives them, of choosing one branch of the legislature? It appears to me, that their numbers, and the value and stable nature of their

property, establishes indisputably the justice of the present constitutional provision in their favour.

It has been conceded by the gentleman from New-York, (Mr. Radcliff,) that real property ought to be made secure, but he contends that the freehold qualification of electors for senators affords no security to it. If he is correct on these points, let me ask why he is so solicitous to do away the freehold qualification for senatorial electors? Why is it desirable to extend the right of suffrage? Will such extension render personal property, and personal rights more secure? How will that increased security be effected? Will it not be derived from the accountability of the elected to the electors by whom they are chosen? And will not the same cause produce a similar effect in favour of the landholders, in case they retain the right of electing senators? Or will real property be better secured by legislative guardians chosen by electors who have no interest in it?

What is the declared sense of the legislature and people of this state, relative to the propriety and security of freehold qualifications? By your statutes, the ownership of a freehold is indispensable, to qualify a man for any of the higher town offices, and to serve as a juror. Those statutes have been in force many years, and their provisions universally approved. How happens this, if there is no merit in freehold qualifications? Does it evince that public sentiment is adverse to such qualifications? To me it is unequivocal evidence of the opinion of this community in their favour.

Again, sir, if a freehold qualification is deemed essential for jurors who are to pass in the first instance upon all our rights, is it less essential for senators, who, as constituent members of the court of errors, are to decide finally upon the same subjects? It is true that the statute provisions to which I have alluded, only recognize the security of the freehold qualifications in the persons to be elected to all the important town offices, and in the persons designated for jurors, and not in the electors; but it cannot be controverted that those recognitions establish the principle for which I contend, inasmuch as freehold qualifications in the electors for senators, is an obvious means to carry the same qualifications, with their wholesome influence, into the senate.

We have also been told, that property of every description will always have its due weight in the legislature. This I take to be an implied admission that it ought to have weight there. How, then, can gentlemen who make this concession, pretend that it is neither wise, nor just to provide by the constitution for giving to real property its due weight in the senate? Is the principle sound, and yet the provision for ingrafting it in the constitution unwise and unjust? This mode of reasoning does not carry conviction to my mind—Does it mean that real property will provide its own protectors in the legislature, without any constitutional provision upon the subject? Let me ask how? If it is to be done by means of our elections, it must be in a way, which, I presume, this Convention is not disposed to sanction—I mean by exercising an undue influence upon the electors. Besides, sir, the body of our farmers, who constitute the mass of freehold electors, are unable to compete in that way with large monied capitalists and manufacturers—Their pecuniary means are generally small, and incompetent for the purposes of such a competition, and their habits and pursuits disqualify them to engage in it upon equal terms with their opponents. Hence it follows as a necessary result, that in order to assure to real property its just weight in the legislature, there must be a fundamental provision in the constitution for the purpose.

It has been urged by the gentleman from New-York, (Mr. Radcliff) that we have large and growing commercial and manufacturing capitalists, which require equal protection with the landed interest of the state. Be it so. The amendment before us will not deprive those capitalists of equal protection.—They will be fully represented in the assembly, and it will be their own choice, if they are not duly represented in the senate also. Let them invest $250 of their overgrown capitals in real property, and they will acquire the right of suffrage for both branches of the legislature. Have they any right to demand that we shall do away the freehold qualification of electors for senators for their accommodation, merely because they do not set a sufficient value upon it to lay out the small sum of $250 to acquire it? I contend that they have not.

Again, it is insisted, that the term for which senators are elected, affords adequate security to real property without the freehold qualification of electors for the senate. I freely admit, sir, that the senatorial term of four years, imparts more stability to the senate, than the assembly possesses, and that it creates a salutary guard against the evils of unwise legislation, which the influence of popular excitements upon the latter branch of the legislature might otherwise produce. But without the freehold qualification of electors for the senate, it does not make the senators accountable for their public conduct to the landholders of the state, and therefore it does not give to the owners of real property, their legitimate weight in the government.

Some of the opposers of the amendment before us, object to it, because, as they allege, it is founded in aristocratic principles. I must confess, sir, that this objection has at least the merit of novelty. A landed aristocracy composed of the great body of yeomen of this state, is, I apprehend, an anomaly. I have sometimes heard the holders of overgrown estates in lands, called aristocrats, but until now, I never heard that the prescribed freehold qualification of $250 for electors of the senate, was considered an aristocratic feature in our constitution. What! the common farmers—the stable pillars of the state, a body of aristocrats? If the ownership of fifty, or an hundred, or two hundred acres of our soil, converts the owner into an aristocrat, then, according to the estimate of the gentleman from Dutchess (Mr. Livingston) two-thirds of the present electors of this state are aristocrats—and hence proceeds, I presume, the solicitude of the remaining one-third, that the right of suffrage may be extended, so as to countervail the aristocratic influence of the farmers, by a class of voters, who, *for the want of real property, are more democratic, and of course more independent.*

The time has been, when a large portion of the real property of the state was vested in a few men of wealth, but that time is past. Our large landed estates are rapidly dividing, and the facilities given to promote their division, by the operation of the statute for regulating descents and abolishing entails, will in a few years break them up. There is, therefore, no ground for apprehension from that quarter.

But the amendment under discussion is assailed by another objection. The gentleman from New-York (Mr. Radcliff) has told us, that if the principle which it contains, be correct, the provision is unjust, because it allows to a landholder to the value of $1000—only an equal vote with one whose freehold is worth no more than $250.

The answer to this objection is plain and easy. It is not necessary for the security of real property, that the freehold votes should be graduated according to the value of each elector's property. The owner of a small farm feels as deep an interest in its protection, as the large landholder does in the protection of his extensive domain. It is their community of interest in the subject, that produces the desired security. For every law which imposes burthens upon, or invades the rights of real property, will affect all the owners of land, in proportion to the value of their respective estates.

We have been admonished, sir, by the gentleman from New-York, as well as by the gentleman from Dutchess, to beware of relying on the speculations and theories of wise and virtuous statesmen in relation to the science of government, for that they are not exempt from fallibility. What lesson should this admonition teach us? Is it not, that we should distrust our own infallibility—that we should not confide too much in our own speculations and theories upon a subject on which the most enlightened and distinguished statesmen have erred, when the prosperous and safe path of experience lays open before us? The wisdom of our present constitution has been tested by the experience of more than forty years—it has guided us to unexampled greatness—it has secured all our rights, and conferred upon us the blessings of peace and happiness—why, then, are we urged to alter some of its most prominent features? Is it the part of wisdom to substitute experiment for experience, in a case so interesting, not only to the present, but to future generations? What dire necessity requires it? The gentleman from Dutchess (Mr. Livingston) has indeed told us, that the freehold qualification of electors for senators, is unfriendly to civil liberty; but has he attempted to prove it? No—it is an assertion that can not be verified—What, a provision founded in the true principles of a free representa

tive government, hostile to civil liberty? Is it incompatible with civil liberty, to give to the landed interest of the state, its due weight in the legislature? Is it necessary to the preservation of civil liberty, so to extend the right of suffrage, that the free and independent votes of our hardy and honest yeomanry may be out numbered by another class of voters, whose stake in the government exists no longer than while they may please to reside within the state, and whose contributions to the support of government are limited to the ordinary exactions and services to which every inhabitant is liable during his residence amongst us? The position of the gentleman is so repugnant to every correct notion of a free representative government, that it only requires to be fully stated, in order to expose, its unsoundness.

The same gentleman has urged, that the freehold qualification of senatorial electors engenders jealousy—is opposed to public opinion, and therefore ought to be abolished. What evidence have we of the state of public opinion on this subject? Whence is it derived? From individual opinions expressed in this house? From the proceedings of party meetings, and such like communications published in the newspapers to promote the views of faction? Is this proper evidence to govern the deliberations and decisions of a convention of the people, especially convened to revise and amend their constitution?

Again—I beg leave to ask, what jealousies exist on the subject? Who are jealous of the freehold right of suffrage for senators? Are any who have no freehold, jealous of those who have? Do they wish to enjoy their rights without becoming freeholders? Is this reasonable? Ought freehold rights to be sacrificed at the unhallowed shrine of such unfounded jealousy? But suppose the unjust sacrifice should be made, will that do away all jealousy! Will it not awaken a well grounded jealousy in the injured freeholders, whom the gentleman has represented to constitute two-thirds of the whole body of electors? Let me admonish that gentleman to beware, lest by attempting to remove an imaginary evil, he may incur the guilt of committing a serious wrong, without accomplishing his professed object.

The gentlemen on the opposite side of the question seem to rely much on the example of other states. What is that example? They say that nearly all the states have abolished the freehold and other property qualifications of electors. For argument's sake, I will admit the fact; but I must at the same time add this further important fact, which they have omitted to state, that very few states have gone the length of wholly passing by freeholds in the constitutional enumeration of the qualifications of electors, and that many recognize the soundness of the principle for which I contend, by requiring a substantial freehold qualification in the elected. Hence it would seem that the example of other states, so far as it has any bearing upon this question, does by no means settle it. And upon a point so deeply involving the best and dearest interests of the people of this state, I would, with great respect for the enlightened statesmen of those states, say, that I am not prepared to admit that their example ought to be conclusive upon us.

I shall detain the committee only a moment longer, while I briefly notice the objection made by the gentleman from Delaware, to that part of the amendment which proposes to confer upon equitable freeholders the right of suffrage for senators. If I understood the gentleman correctly, he considers an equitable freehold as an interest in land, which depends for its existence on the mere will and pleasure of the court of chancery. In this he is greatly mistaken.—Equitable freeholds are as well defined, and are governed by rules, as well ascertained and established as legal estates. The only difference is, that the court of chancery is the equitable protector of the former, and the courts of law are the legal protectors of the latter.

I have now, sir, submitted to the committee my views upon this momentous subject. I regret that my humble talents do not enable me to present its merits with the perspicuity and force which they deserve. All I can reasonably hope is, that my feeble efforts may call forth greater abilities to illustrate and enforce the salutary principles for which I have contended.

On motion of GEN. SWIFT, the committee rose, reported progress, and obtained leave to sit again.

Col Young moved, that the Convention meet hereafter at 9 o'clock A. M.

Chief Justice Spencer moved, that the Convention hereafter continue in session till 3 o'clock P. M.

Chancellor Kent and Mr. Sharpe opposed the motion, upon the ground that the Convention could not sit more than five hours in the day without exhaustion, or to any advantage in the transaction of business.

The Chief Justice said, he made the motion because he was in the habit of sitting more than six hours in a day; but as other gentlemen thought that a session of six hours was too long, he would withdraw it.

Adjourned to 9 o'clock on Monday morning.

MONDAY, SEPTEMBER 24, 1821.

The Convention assembled at 9 o'clock A. M. pursuant to adjournment, when the journal of Saturday was read and approved.

REPORT ON THE JUDICIARY.

Mr. Munro, from the committee to whom was referred so much of the constitution as relates to the judicial department, and to take into consideration the expediency of making any, and if any, what alterations or amendments therein, and to report such amendments as they may deem expedient, made the following report:—

Resolved, That the following amendments ought to be made in the constitution of this state.

1. The judicial power of this state shall be vested in the court for the trial of impeachments and the correction of errors, the court of chancery, the supreme court of judicature, a superior court of common pleas in courts of *nisi prius*, and oyer and terminer and general goal delivery; inferior courts of common pleas to be called county courts and courts of general sessions of the peace; and in such other tribunals of inferior and limited jurisdiction as the legislature may establish, under the restrictions hereinafter mentioned.

II. The court for the trial of impeachments and the correction of errors, shall have original jurisdiction in all cases of impeachments; and appellate jurisdiction in all matters of law and equity, which may be brought up by writ of error upon the judgments of the supreme court, and the superior court of common pleas, or by appeal from the decrees of the court of chancery; and shall hereafter consist of the president of the senate, for the time being, and the senators, chancellor, and vice-chancellor or vice-chancellors, and the judges of the supreme court and superior court of common pleas, or the major part of them; except that when an impeachment shall be prosecuted against the chancellor, or either of the vice-chancellors, or the judges of the supreme court or superior court of common pleas, the person so impeached shall be suspended from exercising his office until his acquittal; and when an appeal from a decree in equity shall be heard, the chancellor shall inform the court of the reasons thereof; but shall not have a voice for its affirmance or reversal. And if the cause to be determined, shall be brought up upon a writ of error, or a judgment of the supreme court, or the superior court of common pleas, the judges of the court rendering such judgment, shall assign the reasons thereof, but shall not have a voice for its affirmance or reversal. The court for the trial of impeachments and the correction of errors, shall not sit at the same time with the legislature, nor shall any member thereof, be retained, or act as counsel in any cause pending therein.

III. The court of chancery shall hereafter consist of the chancellor for the time being, and of a vice-chancellor, who shall have the same power with the chancellor, to hear and determine all matters cognisable in the said court; and the decrees, orders, and acts of the vice-chancellor, shall be deemed to be decrees, orders, and acts of the said court, subject to be reviewed and affirmed, reversed, or discharged by the chancellor on appeal to him. The legislature may, at any time hereafter, whenever it may be deemed expedient, establish a second vice-chancellor, with like jurisdiction and powers. No person shall be appointed a master in chancery, unless he shall be a solicitor of that court, or have been admitted to the degree of counsellor, either in the court of chancery, or in the su-

preme court, or superior court of common pleas, for at least five years previous to his appointment. The number of masters in chancery shall be established by law, and shall not exceed four for the city and county of New York; two for the city and county of Albany, and one for each of the other cities and counties in this state. But whenever the chancellor shall, by an official communication to the legislature, certify that the business of the court requires an increase of their number, specifying particularly where such increase is required, the legislature may authorize the appointment of an additional number of masters to supply the deficiency. The masters in chancery shall be appointed by the supreme appointing power of the state, and shall hold their offices for the term of five years; subject to be at any time removed for incapacity, or misconduct in office. The office of clerk in chancery shall be abolished, and its duties performed by the register, or assistant registers, who, together with the examiners, and other officers of the court, whose appointment is not herein otherwise provided for, shall be appointed by the chancellor, and hold their offices during his pleasure.

IV. No vacancy upon the bench of the supreme court, shall be supplied, so as to make the number of the judges of that court exceed four; and the superior court of common pleas shall consist of a chief justice and three associate justices. The supreme court shall retain its present jurisdiction and powers. The superior court of common pleas shall have jurisdiction, concurrent with the supreme court, in all civil actions of which the supreme court now has jurisdiction, except the power of issuing writs of *mandamus, quo warranto, and prohibition.*

V. The supreme court, and the superior court of common pleas, shall each appoint their own clerks; to hold their offices during the pleasure of the respective courts. And each court shall hold four terms in every year, at such times and places as may be prescribed by law.

VI. A justice of the supreme court, or of the superior court of common pleas, shall, at least once in every year, hold a court of *nisi prius* in each county of this state, for the trial of issues, in suits depending in either of those courts.

VII. The justices of the supreme court, and of the superior court of common pleas, together with the judges of the county courts in each county, or such other magistrates as may be, from time to time, prescribed by law, or any three or more of them, of whom one of the said justices shall always be one, shall be commissioners of oyer and terminer and general goal delivery in each county, and in the several cities of this state; and shall hold courts of oyer and terminer and general goal delivery, in each of the said cities and counties respectively, at such times and places as may be prescribed by law: Provided, that a court of oyer and terminer and general gaol delivery, shall be held at least once in every year in the city and county of New-York, and in each of the other counties.

VIII. An inferior court of common pleas, to be called the county court, shall be established in each county of this state, consisting of a first judge and three associate judges; who, by virtue of their offices, shall be justices of the peace and judges of the cour s of general sessions of the peace in their respective counties.

The county courts shall have the same original jurisdiction in all personal and mixed actions, whether arising in their respective counties, or transitory, as is now exercised by the present courts of common pleas in the respective counties: But all actions that are now removable from the present courts of common pleas, into the supreme court by *habeas corpus* or *certiorari*, shall be removable, in like manner, from the county courts, into the supreme court, or superior court of common pleas, subject to such regulations as may be prescribed by law.

The county courts, (whenever one of the judges thereof shall be of the degree of counsellor at law in the supreme court, or in the superior court of common pleas, of at least five years standing) shall have appellate jurisdiction in civil actions, by *certiorari*, or otherwise, as may be provided by law, for the correction of judgments to be rendered by justices of the peace or other courts of inferior jurisdiction, to be established within the said counties respectively, under such regulations and restrictions, as the legislature may prescribe.

At each term of the county courts, the judges thereof, may hold a court of general sessions of the peace, in and for their respective counties, as may be provided by law.

The county courts shall be also courts for the probate and registering of wills, and granting letters of administration in their respective counties; and shall exercise all powers, now conferred by law on the surrogates in the several counties,

subject to such alterations as the legislature may, from time to time, make. The first judge of each county court, in cases where no *caveat* is entered, shall be the surrogate of the court to take the proof of wills, and grant letters of administration.

A court for the probate and registering of wills and granting letters of administration, shall be established by law in the city and county of New-York, in such manner, and with such powers, as the legislature may prescribe.

The sentences, decrees, and orders of the several courts for the probate of wills and granting letters of administration, shall be subject to the review and correction of the court of chancery, in like manner, as the same have heretofore been reviewed and corrected, by the court of probates of this state, which last mentioned court is abolished.

IX. The court of common pleas, and the court of general sessions of the peace, in the city and county of New-York, shall remain as now established, subject to such alterations and regulations as may from time to time be provided by law.

X. The legislature, whenever it shall be deemed expedient, may establish a court in the city of New-York, for the trial of actions, where the courts of common law have concurrent jurisdiction with the admiralty, in causes civil and maritime: Provided, that the proceedings of the court, so to be established, shall be according to the course of common law, and that its judgments may be examined and corrected by the supreme court, or superior court of common pleas, upon writs of error.

XI. The chancellor and the judges of the supreme court, who shall be appointed to office under this constitution, and the vice-chancellors, and judges of the superior court of common pleas, shall hold their respective offices during good behaviour, until they shall, respectively, have attained the age of sixty-five years; but the governor may, at his discretion, remove any of them from office, upon the address of both houses of the legislature, two-thirds of all the senators and members of assembly elected concurring therein: and they shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office.

They shall not, on any pretence, hold any other office or public trust, whether created under this constitution, or otherwise; and their acceptance thereof, shall vacate their judicial offices: Nor shall they be eligible to the office of governor, or lieutenant-governor, within two years after the expiration, or resignation of their judicial offices.

The first judge, and associate judges of the county courts, shall hold their respective officers during good behaviour, for the term of five years from the dates of their respective commissions.

The first judge of the court of common pleas, in and for the city and county of New-York, who shall be appointed under this constitution the judge of the court for the probate and the registering of wills, and granting letters of administration, to be established in and for the city and county of New-York, and the judge or judges of the court which the legislature are authorized to establish in the said city, for the trial of actions in which the courts of common law have concurrent jurisdiction with the admiralty, in causes civil and maritime, shall respectively hold their offices during good behaviour, for the term of ten years; but may be removed, in like manner as is above provided, in the case of a judge of the supreme court, appointed under this constitution.

The report was committed to a committee of the whole, and ordered to be printed.

THE ELECTIVE FRANCHISE.

The Convention then again resolved itself into a committee of the whole, on the Report of the committee upon the extention of the right of suffrage—Mr. N. Williams in the chair.

[*Chief Justice Spencer's amendment yet under consideration.*]

Mr. Tompkins observed that his ill health would preclude him from entering at length on the present discussion. He regretted the introduction of this amendment, particularly as it carried with it the appearance (whatever might be the fact) of preconcert in those who had introduced and supported it. He hoped the apprehension was unfounded, but after the principle of the original proposition had been agreed to, in relation to an uniform system of voting, it was unfortunate that its repose should have been disturbed.

The honourable, the mover, had referred to the opinions of men of wisdom who had descended to the tomb. But had that gentleman extended his research to the whole of the chapter of the first work to which he has alluded, he would, before its close, have found the refutation of his reasoning. The argument that was there raised refers to a difference of principle in the organization of the elected, not in the qualifications of the electors. The " dissimilarity of genius" contended for, was to consist in: 1st, more advanced age; 2d, longer residence; 3d, fewer numbers; and 4th, greater period of duration.

And, sir, I yield to no man in the respect entertained for that invaluable statesman. Those who have come after him have stamped his name with the impress of imperishable fame. It is complimentary that it is so; but it is not so complimentary that those who defamed him whilst living, should suddenly turn round, and be the first heralds to proclaim his worth, after he is no more.

Sir, I respect the opinions of Mr. Jefferson also; and when the other day I had occasion to quote his opinions, and rest on his authority, I found myself in a woeful minority. Then all the vagaries of theorizing philosophy—the gunboat armament, and the dreams of Condorcet, danced before our vision in all the mazes of imagination and alarm. But now, when his opinions are calculated to serve a particular purpose, they swell into importance and gather into weight that is resistless and overwhelming.

Property, sir, when compared with our other essential rights, is insignificant and trifling. " Life, liberty, and *the pursuit of happiness*"—not of property—are set forth in the declaration of independence as cardinal objects. Property is not even named. It is said, however, that the man of property should have some peculiar safeguard on which he can rely for its protection. But is not property represented in the executive? Is it not provided that he shall be a freeholder?

It is not to be disguised, that we are about to become a naval power. The late war bore triumphant testimony to the fact, that we are under no necessity of maintaining a standing army. The militia is sufficient to repel incursions of the savages, to suppress insurrections or to repel an invading foe. Give them something, then, to fight for. How was the late war sustained. Who filled the ranks of your armies? Not the priesthood—not the men of wealth—not the speculators: the former were preaching sedition, and the latter decrying the credit of the government, to fatten on its spoil. And yet the very men who were led on to battle, had no vote to give for their commander in chief. Gentlemen were very sensitive the other day on the question of excluding the blacks—a class confessedly degraded, ignorant and vicious; and now little sympathy is felt for the white man—the patriot soldier, who shed his blood in the defence of your soil, and whose bones whitened the shore of a foreign enemy.

Mr. T. related the case of a sailing master in the battle on Lake Champlain, who, when the crew, in the severity of the action, had retreated below, called them back to their duty by an artifice, pretending that the British vessel had struck. Animating them by his example, he inspired them with confidence, and the victory was achieved.—His fidelity and heroism would have done honour to Washington; and yet this man died of poverty and a broken heart. He had not a right to vote! We give to property too much influence. It is not that which mostly gives independence. Independence consists more in the structure of the mind and in the qualities of the heart.

Why is the judiciary independent? Because, by the tenure of its office, it is out of the reach of momentary impulse—not because the members of it are rich themselves, or chosen by the rich. We have yielded to property as much as it deserves. It remains, also, that we should look to the protection of him who has personal security and personal liberty at stake. It is the citizen soldier who demands the boon, and he rightfully demands it. It is a privilege inestimable to him, and " only formidable to tyrants."

Mr. Cramer. I had supposed that the great fundamental principle, that all men were equal in their rights, was settled, and forever settled, in this country. I had supposed, sir, that there was some meaning in those words, and some importance in the benefits resulting from them. I had supposed from the blood-

and treasure which its attainment had cost, that there was something invaluable in it: and that in pursuance of this principle it ought to be the invariable object of the framers of our civil compact, to render all men equal in their political enjoyments as far as could be, consistent with order and justice. But, sir, this, the honourable gentleman from Albany, for whose opinion on such subjects, I have entertained a profound respect, and who has presented the amendment now under consideration, has informed us with great assurance and emphasis, is a most egregious mistake, and that in it consists the very essence of aristocracy. However, he has the charity to suppose that the mistake arose in the committee of which I had the honour of being a member, and who presented the report on your table, not from design, but from ignorance, and that a careful examination of proper authorities, on this subject, would convince any person of the correctness of his position; and as a lawyer and a distinguished jurist, he has referred us to certain authorities which I shall endeavour to examine as to their bearing on the subject under discussion, in the same order in which they were presented. And first, the 62d number of "The Federalist," said to be written by the venerated Hamilton; I have read it, and it contains no such principles, it advocates no such sentiments as are contained in the amendment of the honourable gentleman from Albany; for the author is there describing the necessary qualifications of the *elected*, not of the *electors*. But, the gentleman has said, that whatever had fallen from the pen of that distinguished statesman, is entitled to great consideration, and is to be considered as a political text book to the framers of free government, and has also said that he entertains the most profound veneration for all his political writings. I have read, sir, other productions of that venerable gentleman, in the secret debates of the Convention which formed the constitution of the United States; I have read there, sir, the plan which he submitted to that Convention in which he recommends a president for life, a senate for life, and that the president should have the power of appointing the state executives. Is this, the political text book which the gentleman from Albany, so much admires? Is this, the form of government which this gentleman, wishes to see adopted? I presume not. I too, sir, have a high estimation of the character of the departed Hamilton; he had talents, he had integrity of a superior, I had almost said, of a celestial order; but he was mortal and subject to the frailties of our nature; he had entertained too degrading an opinion of his fellow man, his political opinions, therefore, I never did respect, and I will not, I cannot, play the hypocrite by pretending to revere, now he is no more, what I condemned in him while living. Next, sir, we were referred to the opinion of that champion of the rights of man, Mr. Jefferson, whom I consider of all others in this country, as having done the most in the establishment and maintenance of civil and religious liberty; that man who will of all others in this country, occupy the seat in the temple of fame, and the most exalted place in the affections of his countrymen; and we were told, and gravely told, that this distinguished individual, in his Notes on Virginia, had advocated a freehold distinction as to the qualifications of electors. But it would have been fair, it would have been candid, and was due to the character of that truly great man, to have stated one further fact, which I presume the gentleman from Albany was conversant with, which is, that Mr. Jefferson had retracted that opinion, and that some years since when a Convention was contemplated in Virginia for new modelling the constitution of that state, Mr. Jefferson presented an entire new plan, in which he did not recognize the right or the necessity of any freehold distinction in the electors, and that in fact he recommended almost universal suffrage. Next, sir, we were invited by the honourable gentleman to take a sail across the Atlantic and witness the blessed effects of his system of exclusive rights and privileged orders in the great city of Paris, where, we were told, there are fifty poor persons to one man of fortune, so that each landed nabob, there, can have fifty menial servants, subject to his nod, to administer to his comfort and to supply his wants. Next, we were invited to behold the glorious inequality in property and in the civil privileges of the people of England, and among other causes it was ascribed, and justly so, to their system of borough elections, the very system which the gentleman would by his amendment adopt here; for as in that, so in his system, territory and not

population is the basis of representation; there, sir, many little deserted villages and boroughs, which do not contain fifty families, have the right to elect two representatives to the house of commons; and are equal rights and equal enjoyments, recognized there? No, sir, privileged orders and a landed aristocracy, the natural effects of a monarchical government, are, and ever have been, the order of the day; thus much, for the authorities of the gentleman; and in turn I would refer him, and this committee, to a few plain, practical, modern commentators on the rights of man and on civil government, in our own country: namely, the constitutions of the several states. True, they have nothing of royalty, nor much of antiquity to recommend them. First, sir, I will mention the state of Connecticut, that land of steady habits, that very *peculiar* people. That state, sir, in 1818, had a Convention for the purpose of forming a constitution consisting of her most distinguished civilians, and her most profound jurists, and they did not think it necessary, in order to protect the landed interest of that state, that a principle of this kind should be engrafted in their constitution. No, sir, freehold distinctions among the electors had not an advocate in that venerable assembly, and they extended this right to nearly all their male adult population. In Rhode Island also, which has something of antiquity to recommend it to the consideration of this committee, the civil rights obtained under a charter from Charles II. in 1688, continue to be enjoyed; and no property test whatsoever, is required in the elector; there, too, are old cities, and a dense population, and who has ever yet heard that any of these evils have been there realized, which will at some future period, as is prognosticated, subvert the foundation of your government, if the report of the committee should be adopted. Who has ever yet heard of a combination of their poor, of their profligate poor, as they have been denominated on this floor, to steal the farms of their more wealthy neighbours? In fact, but two states in the union, with the exception of this state, have any freehold distinction as to electors; which are Virginia and North-Carolina; and the constitutions of those states were adopted at an early period of the revolutionary war, when the rights of man were little understood, and the blessings of a free government had not been realized. And when in opposition to these we find that all the different constitutions which have been formed or amended within the last thirty years, have discarded this odious, this aristocratical, this worse than useless, feature, from their political charts, will any gentleman of this committee say that all this affords no evidence to his mind, of the impropriety of retaining this freehold distinction? To me, it is satisfactory and conclusive.

I will now take notice of some of the remarks of the honourable gentleman from Albany who next addressed the house on this subject, (Chancellor Kent;) and it did appear to me, that they were not intended exclusively for this committee, and that they had little to do with the subject before us. I considered them an elegant epitaph prepared for the old constitution, when it should be no more, and as every thing which falls from that gentleman, has the stamp of superior genius, I did conceive it a most incomparable production, for the purposes for which it was intended, doing much honour to his head, and much credit to the tenderness of his heart. But as it may have made a different impression, on others, it may not be an idle waste of time to allude, at least, to one of his most prominent objections to the report of the committee, which was, that the old constitution had become sacred, and ought not to be touched, on account of its antiquity, and the respect we should feel for the venerable sages who had framed it: and on account of the many previous peculiar blessings we had enjoyed under it. We were reminded of the churches that had been built, of the seminaries of learning, which have been erected, of the western wilderness, which had been converted into fruitful fields; that Providence had smiled on all our undertakings, that great internal improvements, in inland navigation were progressing, to an extent and with a rapidity that had drawn upon us, the attention, and admiration, of the world; and in view of all these it seemed to that gentleman, as though we should be wanting in gratitude, were we to admit any material alterations, in the form of our government: and that in addition he would say it, who ought perhaps, not to say it, that we had had an able and impartial administration of our laws. But, sir, I will say it, who may say it,

that we have had an able, and distinguished judiciary, and but for their improper interference with political matters, they would have enjoyed the respect, the veneration, and confidence of all. And what has all this to do with the subject before us? nothing, sir, and to elucidate this position, let us suppose for a moment, that a convention was called in England for altering their constitution, and suppose that Lord Castlereagh was returned one of the members elect.

Could he yet, with the same plausibility, inform that assembly, that their nation and government had, above all others, received peculiar marks of the protection of Providence in a variety of instances? Would he not tell them that a kind Providence had removed a Bonaparte, that scourge of their nation? And might he not add that the kind Providence, to promote the tranquillity and happiness of their kingdom, had lately taken the consort of his royal highness to himself? And that in view of all these blessings, it would be sacrilegious to alter or amend any part of their constitution? Let me now, sir, take notice of the gentleman. He was a member, and I trust an important member, of the committee on the legislative department, and that committee have reported more amendments, and very important amendments, too, than any other committee. And is one part of our present constitution so much more sacred than any other? I know of no distinction but that which best secures the equal rights and liberties of the citizen.

I shall now take notice of what was said by my venerable friend from Albany, (Mr. Van Vechten,) who last addressed this committee, and as he took an extensive range, and travelled over a wide field of conjecture, into which his fertile imagination and extensive information generally lead him, I must be excused, should I only touch on *some* of the frightful spectres, which he has painted, to terrify and alarm this community. He affected to be ignorant of public sentiment on this subject, and doubted, whether the very men, who have been heretofore excluded from the exercise of this right, would be so unreasonable as to wish its exercise in the election of members to that branch of the legislature, heretofore consecrated to the soil. I have heard much on this subject for several years past, and so far as I have been able to judge, there is but one sentiment among the intelligent and virtuous, which is "grant universal suffrage to all, except those excluded by crime, and abolish the distinction, in regard to electors which now prevails, because of one man's possessing more of the soil than another."

He knew nothing of any public meetings, entitled to any weight, in sanctioning this alteration! There were some, sir, of which I have heard, held on the last Tuesday of April last, in every town and county in this state, and at which a majority of seventy thousand demanded and alteration in this feature of our constitution; there was, sir, another meeting, in June last, of the people, on this subject, and they, by their ballots, elected the members of this Convention, and demand, at their hands, the extension of equal rights and equal enjoyments, without distinction as to property. This was one of the great objects, which induced the people to call a Convention; but for this, sir, and for the purpose of having your government made cheaper and more economical in all its departments, this Convention would not have been called by the honest yeomanry of the country; and it was not for the paltry, contemptible consideration, of disposing of the loaves and fishes, as stated by a gentleman from New-York, in debate a few days since. But it has been said, that the landed interest of this state, bears more than its equal proportion of the burthens of taxation. This, sir, I deny. All property, real and personal, is equally taxed, and bears its just proportion of the public burthens; but, sir, is not life and liberty dearer than property, and common to all, and entitled to equal protection? No, sir. That gentleman appeared to be impressed with the idea, that the *turf* is of all things the most sacred, and that for its security, you must have thirty-two grave turf senators from the soil, in that *Sanctum Sanctorum*, the senate chamber, and then all your rights will be safe. No matter whether they possess intelligence, if they are selected by your rich landholders, all is well.—But it is alledged by gentlemen, who have spoken on that side of the house, that the poor are a degraded class of beings, have no will of their own, and would not exercise this high prerogative with independence and sound discretion if entrusted with it:

and, therefore, it would be unwise to trust them with ballots.—This, sir, is unfounded: for more integrity and more patriotism are generally found in the labouring class of the community than in the higher orders. These are the men, who add to the substantial wealth of the nation, in peace. These are the men, who constitute your defence in war. Of such men, consisted your militia, when they met and drove the enemy at Plattsburgh, Sacket's Harbour, Queenston, and Erie; for you found not the rich landholder or speculator in your ranks; and are we told, that these men, because they have no property, are not to be trusted at the ballot boxes! Men, who in defence of their liberties, and to protect the property of this country, have hazarded their lives; and who, to shield your wives and children from savage brutality, have faced the destructive cannon, and breasted the pointed steel? All this they could be trusted to do. They could, without apprehension, be permitted to handle their muskets, bayonets, powder and balls; but, say the gentlemen, it will not answer to trust them with tickets at the ballot boxes. I would admonish gentlemen of this committee, to reflect, who they are about to exclude from the right of suffrage, if the amendment under consideration should prevail.—They will exclude your honest industrious mechanics, and many farmers, for many there are, who do not own the soil which they till. And what for? Because your farmers wish it? No, sir, they wish no such thing; they wish to see the men who have defended their soil, participate equally with them in the election of their rulers. Nay, now you exclude most of the hoary headed patriots, who achieved your independence, to whom we are indebted for the very ground we stand upon, and for the liberties we enjoy. But for the toil and sufferings of these men, we should not now be here debating as to forms of government. No, sir, the legitimates would soon have disposed of all this business. And why are these men to be excluded? Not because they are not virtuous, not because they are not meritorious; but, sir, because they are poor and dependant, and can have no will of their own, and will vote as the man who feeds them and clothes them may direct, as one of the honourable gentlemen has remarked. I know of no men in this country, who are not dependant. The rich man is as much dependant upon the poor man for his labour, as the poor man is upon the rich for his wages. I know of no men, who are more dependant upon others for their bread and raiment, than the judges of your supreme court are upon the legislature, and who will pretend that this destroys their independence, or makes them subservient to the views of the legislature. Let us not, sir, disgrace ourselves in the eyes of the world, by expressing such degrading opinions of our fellow citizens. Let us grant universal suffrage, for after all, it is upon the virtue and intelligence of the people that the stability of your government must rest. Let us not brand this constitution with any odious distinctions as to property, and let it not be said of us as has been truly said of most republics, that we have been ungrateful to our best benefactors.

Mr. Buel. The subject now before the committee, is thought by many gentlemen to be the most important that will fall under our deliberations. I shall differ from the honourable member who proposed the amendment, and the gentlemen who have advocated it. For those gentlemen, and their opinions, I entertain the highest respect, and have had the honour to agree with them on most of the questions which we have hitherto considered. The high respect which I have for these distinguished gentlemen, as well as the importance generally attached to this question, constrain me to state the reasons which will influence my vote. I shall, however, confine myself to a very limited view of the subject. The question whether it is safe and proper to extend the right of suffrage to other classes of our citizens, besides the landholders, is decided as I think, by the sober sense and deliberate acts of the great American people. To this authority I feel willing to bow. An examination of the constitutions of the different states, will show us that those enlightened bodies of statesmen and patriots who have from time to time been assembled for the grave and important purpose of forming and reforming the constitutions of the states—have sanctioned and established as a maxim, the opinion that there is no danger in confiding the most extensive right of suffrage to the intelligent population of these United States.

Of the twenty four states which compose this union, twelve states require only a certain time of residence as a qualification to vote for all their elective officers—eight require in addition to residence the payment of taxes or the performance of militia duty—four states only *require* a freehold qualification, viz. New-York, North-Carolina, Virginia, and Rhode-Island. The distinction which the amendment of the gentleman from Albany proposes to continue, exists only in the constitution of this state, and in that of North-Carolina.

In some of the states, the possession of a freehold, constitutes one of several qualifications, either of which gives the right of suffrage; but in four only, is the exclusive right of voting for any department of the government confined to landholders.

The progressive extension of the right of suffrage by the reformations which have taken place in several of the state constitutions, adds to the force of the authority. By the original constitution of Maryland, (made in 1776,) a considerable property qualification was necessary to constitute an elector. By successive alterations in the years 1802, and 1810, the right has been extended to all the white citizens who have a permanent residence in the state. A similar alteration has been made in the constitution of South-Carolina; and by the recent reformations in the constitutions of Connecticut and Massachusetts, property qualifications in the electors have been abolished; the right is extended in the former almost to universal suffrage, and in the latter to all the citizens who pay taxes. It is not in the smaller states only, that these liberal principles respecting suffrage, have been adopted. The constitution of Pennsylvania, adopted in the year 1790, extends the right of suffrage to all the citizens who pay taxes, and to their sons between the age of twenty-one and twenty-two years.

That constitution was formed by men, distinguished for patriotism and talents. At the head of them, we find the name of Judge Wilson, a distinguished statesman, and one of the founders of the constitution of the United States.

The constitution of Pennsylvania was formed on the broad principle of suffrage, which that distinguished man lays down in his writings. "That every "citizen whose circumstances do not render him necessarily dependant on "the will of another, should possess a vote in electing those, by whose con- "duct his property, his reputation, his liberty, and his life may be almost mate- "rially affected." This is the correct rule, and it has been adopted into the constitution of every state which has been formed since the government of the United States was organized. So universal an admission of the great principle of general suffrage, by the Conventions of discreet and sober minded men, who have been engaged in forming or amending the different constitutions, produces a strong conviction that the principle is safe and salutary.

It is said by those who contend that the right of voting for senators should be confined to the landholders, that the framers of our constitution were wise and practical men, and that they deemed this distinction essential to the security of the landed property; and that we have not encountered any evils from it during the forty years experience which we have had. To this I answer, that if the restriction of the right of suffrage has produced no positive evil, it cannot be shown to have produced any good results.

The qualifications for assembly voters, under the existing constitution, are as liberal as any which will probably be adopted by this Convention. Is it pretended that the assembly, during the forty-three years experience which we have enjoyed under our constitution, has been, in any respect, inferior to the senate? Has the senate, although elected exclusively by freeholders, been composed of men of more talents, or greater probity, than the assembly? Have the rights of property, generally, or of the landed interest in particular, been more vigilantly watched, and more carefully protected by the senate than by the assembly? I might appeal to the journals of the two houses, and to the recollections and information of the members of the committee on this subject; but it is unnecessary, as I understand the gentlemen who support the amendment, distinctly admit, that hitherto the assembly has been as safe a depository of the rights of the landed interest, as the senate. But it is supposed that the framers of our constitution must have had wise and cogent reasons for making such a distinction between the electors of the different branches of the

government. May we not, however, without the least derogation from the wisdom and good intentions of the framers of our constitution, ascribe the provision in question to circumstances which then influenced them, but which no longer ought to have weight?

When our constitution was framed, the domain of the state was in the hands of a few. The proprietors of the great manors were almost the only men of great influence; and the landed property was deemed worthy of almost exclusive consideration. Before the revolution, freeholders only were allowed to exercise the right of suffrage. The notions of our ancestors, in regard to real property, were all derived from England. The feudal tenures were universally adopted. The law of primogeniture, by which estates descended to the eldest son, and the rule of descent by which the male branches inherited the paternal estate, to the exclusion of the female, entails, and many other provisions of feudal origin were in force. The tendency of this system, it is well understood, was to keep the lands of the state in few hands. But since that period, by the operation of wiser laws, and by the prevalence of juster principles, an entire revolution has taken place in regard to real property. Our laws for regulating descents, and for converting entailed estates into fee-simple, have gradually increased the number of landholders: Our territory has been rapidly divided and subdivided: And although the landed interest is no longer controlled by the influence of a few great proprietors, its aggregate importance is vastly increased, and almost the whole community have become interested in its protection. In New-England, the inhabitants, from the earliest period, have enjoyed the system which we are progressively attaining to. There, the property of the soil has always been in the hands of the *many*. The great bulk of the population are farmers and freeholders, yet no provision is incorporated in their constitutions, excluding those who are not freeholders from a full participation in the right of suffrage. May we not trace the notions of the framers of our constitution, respecting the exclusive privilege of the freeholders, to the same source from whence they derived all their ideas of real property?

In England, from the earliest times, the superiority of the landed interest was maintained. To go no farther back than the Norman invasion, we find the domain of England parcelled out in great manors among the followers of the Conqueror. They and their descendants, for many years, were the only legislative and judiciary power in the kingdom. Their baronies gave them the right of legislation. It was a privilege annexed to the land which their vassals cultivated. Their vassals, in process of time, became freeholders, and formed the juries in the manor courts.

It was a long time before any other interests than that of the landholders was attended to. For some hundred years, the great cities and boroughs were not considered worthy of being represented in the great councils of the kingdom. And although numerous great interests have since arisen, the house of peers and the knights of the shire, are still supposed to represent the landed interest exclusively. It was not surprising that the framers of our constitution, though they in the main aimed to establish our government on republican principles, should have adopted some of the notions which they inherited, with their domains, from their ancestors. The force of habit and prejudice which induced those illustrious men to incorporate in the constitution absurd provisions, will manifestly appear by adverting to a single instance of the application of the rule established by them, to determine the right of voting for senators and governor.

A man who is possessed of a piece of land worth $250 for his own life, or the life of another person, is a freeholder, and has the right to vote for governor and senators. But one who has an estate in ever so valuable a farm, for 999 years, or any other definite term, however long, is not a freeholder and cannot vote. The absurdity of the distinction, at this day, is so glaring as to require no comment. Yet there are numerous farmers, in different parts of the state, who are excluded from the right of suffrage on this absurd distinction between freehold and leasehold estates. No person will now pretend that a farmer who holds his land by a thousand years lease is less attached to the soil, or less likely to exercise the privilege of freeman discreetly, than a freeholder. We shall

not, I trust, be accused of want of respect to settled institutions, if we expunge such glaring absurdities from our constitution. It is supposed, however, by the honourable member before me (Chancellor Kent) that landed property will become insecure under the proposed extension of the right of suffrage, by the influx of a more dangerous population. That gentleman has drawn a picture from the existing state of society in European kingdoms, which would be indeed appalling, if we could suppose such a state of society could exist here. But are arguments, drawn from the state of society in Europe, applicable to our situation? I think the concessions of my honourable friend from Albany, who last addressed the committee, (Mr. Van Vechten) greatly weaken the force of the arguments of his honour the Chancellor.

It is conceded by my honourable friend, that the great landed estates must be cut up by the operation of our laws of descent; that we have already seen those laws effect a great change; and that it is the inevitable tendency of our rules of descent, to divide up our territory into farms of moderate size. The real property, therefore, will be in the hands of the *many*. But in England, and other European kingdoms, it is the policy of the aristocracy to keep the lands in few hands. The laws of primogeniture, the entailments and family settlements, all tend to give a confined direction to the course of descents. Hence we find in Europe, the landed estates possessed by a few rich men; and the great bulk of the population poor, and without that attachment to the government which is found among the owners of the soil. Hence, also, the poor envy and hate the rich, and mobs and insurrections sometimes render property insecure. Did I believe that our population would degenerate into such a state, I should, with the advocates for the amendment, hesitate in extending the right of suffrage; but I confess I have no such fears. I have heretofore had doubts respecting the safety of adopting the principles of a suffrage as extensive as that now contemplated. I have given to the subject the best reflection of which I am capable; and I have satisfied myself, that there is no danger in adopting those liberal principles which are incorporated in almost all the constitutions of these United States.

There are in my judgment, many circumstances which will forever preserve the people of this state from the vices and the degradation of European population, beside those which I have already taken notice of. The provision already made for the establishment of common schools, will, in a very few years, extend the benefit of education to all our citizens. The universal diffusion of information will forever distinguish our population from that of Europe. Virtue and intelligence are the true basis on which every republican government must rest. When these are lost, freedom will no longer exist. The diffusion of education is the only sure means of establishing these pillars of freedom. I rejoice in this view of the subject, that our common school fund will (if the report on the legislative department be adopted,) be consecrated by a constitutional provision; and I feel no apprehension, for myself, or my posterity, in confiding the right of suffrage to the great mass of such a population as I believe ours will always be. The farmers in this country will always out number all other portions of our population. Admitting that the increase of our cities, and especially of our commercial metropolis, will be as great as it has been hitherto; it is not to be doubted, that the agricultural population will increase in the same proportion. The city population will never be able to depress that of the country. New-York has always contained about a tenth part of the population of the state, and will probably always bear a similar proportion. Can she, with such a population, under any circumstances, render the property of the vast population of the country insecure? It may be that mobs will occasionally be collected, and commit depredations in a great city; but, can the mobs traverse our immense territory, and invade the farms, and despoil the property of the landholders? And if such a state of things were possible, would a senate, elected by freeholders, afford any security? It is the regular administration of the laws by an independent judiciary, that renders property secure against private acts of violence. And there will always be a vast majority of our citizens interested in preventing legislative injustice.

But the gentleman who introduced the proposition now before the committee, has predicted dangers of another kind to the landed interest, if their exclusive

right of electing the senate shall be taken away. He supposes, that combinations of other interests will be formed to depress the landholders, by charging them exclusively with the burthen of taxation.

I cannot entertain any apprehension that such a state of things will ever exist. Under any probable extension of the right of suffrage, the landed interest will, in my view of the subject, always maintain a vast preponderance of numbers and influence. From what combinations of other interests can danger arise? The mercantile and manufacturing interests are the only ones which can obtain a formidable influence. Are the owners of manufacturing establishments, scattered through the state, as they always must be, likely to enter into a confederacy with the merchants of the great cities, for the purpose of depressing the yeomanry and landholders of this great state? Has our past experience shewn any tendency in those two great interests, to unite in any project, especially for such an one as that which I have mentioned? We usually find the merchants and manufacturers acting as rivals to each other: but both feel a community of interest with the landholders; and it will ever be the interest of the farmers, as it ever has been, to foster and protect both the manufacturing and mercantile interests. The discussions which the tariff has undergone, both in and out of congress, have demonstrated the feelings of rivalship which exist between our manufacturers and our merchants. But who has ever heard, in this or any other country, of a combination of those two classes of men, to destroy the interest of the farmers? No other combination, then, can be imagined, but that of the poor against the rich. Can it be anticipated, that those who have no property can ever so successfully combine their efforts, as to have a majority in both branches of the legislature, unfriendly to the security of property?

One ground of the argument of gentlemen who support the amendment is, that the extension of the right of suffrage will give an undue influence to the rich over the persons who depend upon them for employment; but if the rich control the votes of the poor, the result cannot be unfavourable to the security of property. The supposition that, at some future day, when the poor shall become numerous, they may imitate the radicals of England, or the jacobins of France; that they may rise, in the majesty of their strength, and usurp the property of the landholders, is so unlikely to be realized, that we may dismiss all fear arising from that source. Before that can happen, wealth must lose all its influence; public morals must be destroyed; and the nature of our government changed, and it would be in vain to look to a senate, chosen by landholders, for security in a case of such extremity. I cannot but think, that all the dangers which it is predicted will flow from doing away the exclusive right of the landholders to elect the senators, are groundless.

I contend, that by the true principle of our government, property, as such, is not the basis of representation. Our community is an association of persons—of human beings—not a partnership founded on property. The declared object of the people of this state in associating, was, to "establish such a government as they deemed best calculated to secure the rights and liberties of the good people of the state, and most conducive to their happiness and safety." Property, it is admitted, is one of the rights to be protected and secured; and although the protection of life and liberty is the highest object of attention, it is certainly true, that the security of property is a most interesting and important object in every free government. Property is essential to our temporal happiness; and is necessarily one of the most interesting subjects of legislation. The desire of acquiring property is a universal passion. I readily give to property the important place which has been assigned to it by the honourable member from Albany (Chancellor Kent.) To property we are indebted for most of our comforts, and for much of our temporal happiness. The numerous religious, moral, and benevolent institutions which are every where established, owe their existence to wealth; and it is wealth which enables us to make those great internal improvements which we have undertaken. Property is only one of the incidental rights of the person who possesses it; and, as such, it must be made secure; but it does not follow, that it must therefore be represented specifically in any branch of the government. It ought, indeed, to have an

influence—and it ever will have, when properly enjoyed. So ought talents to have an influence. It is certainly as important to have men of good talents in your legislature, as to have men of property; but you surely would not set up men of talents as a separate order, and give them exclusive privileges.

The truth is, that both wealth and talents will ever have a great influence; and without the aid of exclusive privileges, you will always find the influence of both wealth and talents predominant in our halls of legislation.

I will present to the committee only one additional consideration. The gentleman, who introduced the amendment, has cited a passage from the writings of the immortal Hamilton, in support of his proposition.

The opinions of that profound statesman, I shall ever regard with the highest reverence. But surely the passage cited from the Federalist, gives no support to the doctrine now contended for: but if I mistake not, the pages of that celebrated work furnish the strongest illustration of the doctrine for which I contend. I will not cite any particular passages to this committee, from a work so familiar as the Federalist must be, to every man who has studied the structure of our government. I will only refer to the general reasoning adopted by the writers of that work, to demonstrate the wisdom of the provisions in our national constitution, in regard to the qualifications of electors and elected. In discussing that important subject, and also the power of taxation confided to the general government, those illustrious statesmen have most satisfactorily shown it to be a prominent feature in the constitution of the United States, and one of its greatest excellencies, that orders and classes of men, would not, and ought not, as such, to be represented; that every citizen, qualified by his talents or his virtues, should be eligible to a seat in either branch of the national legislature, without regard to his occupation or class in society. And it was predicted and expected that men of every class and profession, would find their way to the legislature of the union. That, more safety to the rights of every class, would be found in such an organization; and that although the landed interest would always probably predominate, the rights of all would be more carefully attended to, and more effectually secured, than they would have been, had orders and classes of men been represented as such. The framers of our constitution placed their confidence in the virtue and intelligence of the great mass of the American people. It was their triumphant boast to have formed a government which should "establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty," without recognizing or creating any odious distinctions, or giving any preference to any particular classes or orders of men. Hence our members of congress are elected by the great body of our citizens. Surely it is as safe to confide to them the election of state senators, as that of national representatives. To congress is confided the high power of declaring war and levying taxes. Their power over property is at least as great as the state legislature possesses. If it is safe to trust the destinies of the nation to men chosen by the same electors who choose our members of assembly, can it be less safe to entrust to that class of electors the right of choosing our state senators? I know that if the right of suffrage is extended; if the distinction between electors for senate and assemblymen is abolished it can never be recalled. I have, on that account, attentively reflected on the probable consequence of doing away the distinction, and have satisfied myself that it will be safe, and that it is expedient. The distinction I believe to be useless. The public sentiment in America has pronounced it to be so. The national government is founded on the principle of a diffusive suffrage. Most of the states have adopted the principle: and as our fortunes are embarked with theirs in one common ship, we cannot expect that our government under any regulation of the right of suffrage, will survive the union of the states. If that government is safe without a distinction in the electors founded on property, we need not fear to abolish a distinction which, if retained, will cause much uneasy feeling among the people, and bring an unnecessary odium upon the landed interest. A distinction which will have a tendency to excite combinations unfriendly to the interest of the land holders, and which, but for the distinction in the right of suffrage, will probably never exist.

Chief Justice Spencer said, that as he had once occupied the floor, and had expressed his sentiments on this question, he did not now rise to enter again into the debate. But he felt himself called on, (and he hoped the committee would indulge him the privilege) to reply to some remarks which fell from the gentleman from Richmond, (Mr. Tompkins.) It had been said, that he and his colleagues acted on this question from preconcerted measures. He repelled such an allegation; he had concerted no plans of opposition with his colleagues; and he declared that his conduct was actuated by no other motives, than the sincere convictions of his own mind, and the conscientious discharge of his duty. The disagreement between his own proposition, and that of one of his honourable colleagues, furnished evidence, if any were needed, that there had not been a preconcert among the delegation.

The gentleman from Richmond had made some remarks on the revilers and calumniators of General Hamilton; and he, (Mr. S.) felt himself entitled to call for an explanation, and to demand whether those remarks were intended to be applied to him. [Here Mr. President rose and explained. He disclaimed any personal allusion, and denied having used the language, which had been imputed to him.] Mr. Spencer remarked, that after this explanation he had nothing more to say. It had again been his misfortune to misunderstand the gentleman from Richmond. But as he was up, and as other members might have received the same impressions as himself, he would take this occasion to add, that before the death of General Hamilton, he, (Mr. S.) had had the good fortune to attract his notice, and to receive marks of his kindness and friendship; and he, (Mr. S.) entertained the same views of his character, and the same friendly feelings towards him, which he expressed in his remarks on Saturday. He believed him to be one of the greatest and most upright statesmen that our country ever produced. He admired his sincerity and friendship. He, (Mr. Hamilton) carried his heart in his hand, and you could always read its truth and integrity. He never disguised his feelings—he was guilty of no duplicity—and did not flatter and deceive the people with false and empty professions.

Mr. Ross. It is not my intention, sir, to engross much of the time of this Convention, much less on this occasion, since the amendment under consideration has already received a pretty full discussion. The honourable mover of this amendment, (the Chief Justice,) as well as those gentlemen who have supported it, have laboured to impress a belief, that to preserve a distinction in voting for senators, founded on the possession of two hundred and fifty dollars amount of freehold by the electors, is absolutely necessary to secure the rights of property. That to abrogate this feature in our present constitution, would be dangerous—that it would be a reflection upon the wisdom of our ancestors who framed it: that it is not sanctioned by the practice or example of other states; and, finally, that no innovation has been called for by the people of this state, to their knowledge.

Sir, in aristocratic and monarchial governments alarms of this kind, are always sounded by ministers and nobility, whenever the people call for the extension of privilege, so as to awe them into silence—But in republican states, it is worthy of consideration to examine and ascertain whether such apprehensions be real or imaginary.—That the framers of our present constitution thought it wise to introduce this feature, I have no doubt, having to act as they did, amidst the storms of the revolution, and under peculiar circumstances which no longer exist. The reason they adopted that feature, has on former occasions been frequently, and I believe, satisfactorily explained, which was, that nearly all the freehold property in the state was then possessed by a few families, and unless they were indulged in this favourite discrimination, it would lead to disaffection, which the most imperious consideration of safety, urged them to prevent, and to do every thing in their power to conciliate and enlist the wealthy in support of the cause in which they were then engaged.—In such a state of things, it was a wise and salutary provision, because any innovation calculated to alarm or disaffect those on whom they were obliged to depend for resources, would have been dangerous. But since our situation is now so widely changed, and property infinitely divided, the danger has ceased to exist. If such alarming apprehensions as have been held up to view, were

well founded ; if this distinction in voting for one branch of the government, be necessary to preserve a check upon the other, by which to secure the rights of property, as some contend, then are our sister states in a most sad dilemma. For a reference to their respective constitutions will establish the fact, that not a single constitution adopted since the period of the revolution, contains a solitary provision of the kind. Can it be supposed that all our statesmen of this enlightened age, have been seized with a fatal delusion ? Have they been deaf to the admonitions and maxims of wisdom, regardless alike of the guardianship of property, and the preservation of their states, by discarding a provision so wholesome and necessary. Such indeed has been their folly and madness, if the direful apprehensions so pathetically depicted by gentlemen who support this amendment, be real, But, sir, were they to assign the reasons why they had not adopted in any of their constitutions the provision contemplated by this amendment, I apprehend they would be the same that prompt the people of this state to call for its abolition, to wit, that they deemed it not only unjust, but an odious remnant of aristocricy unfit to be incorporated into the free institutions of a republican government. But it is said bythe supporters of this amendment, that the people of this state have expressed no wish in favour of its abolition. Then are they incapable of manifesting their wishes.—In fact every channel through which public opinion could be conveyed, not by one party alone, this anti-republican distinction has been for years the theme of complaint. The executive of this state, we are informed, has been petitioned to recommend it to the legislature to call a Convention for the purpose of altering this, as well as other parts of the constitution, so at least, as to do away this illiberal and unjust restriction upon the right of suffrage. And yet shall we be told these calls have not come to our knowledge ? The distinction proposed by this amendment, has already been the fruitful source of tumult, disorder and animosities, of corruption and perjuries at elections.—Many have imagined, or pretended to imagine, that they were freeholders, when they held nothing but conditional contracts. To evade a discrimination so repugnant to freedom, men have frequently sworn in their votes, by taking a conveyance during the election, or by testifying that they were worth the necessary amount when they were notoriously in a state of bankruptcy. Instances of these several cases and a variety of others, have occurred within my own personal observation. In such a state of things, the practice of challenging will be more or less resorted to, and which produces the most bitter resentments, disorder, and often violence. At the same time the unprincipled will evade the law with impunity, while the conscientious will be excluded.

Sir, the honourable Chief Justice in a former debate, in a very able and impressive manner, showed the necessity of avoiding the practice of administering oaths to test the qualifications of electors. And, sir, I did hope that neither that gentleman, nor his honourable colleagues, would urge the adoption of a provision that would inevitably undermine the sound and wholesome maxim he had so strongly inculcated, so long as the amendment in question, would infallibly tend to the commission of crimes. Indeed the best interests of society. are opposed to its adoption. To include what he has been pleased to term equitable freeholds, serves still more to increase the difficulty, by rendering it impossible to test the qualifications of electors, by any other mode than by their own oaths. But, sir, we are told that unless men possess two hundred and fifty dollars worth of freehold, they are not to be trusted in the choice of senators, especially the labouring class, without property. Sir, I know not what may be the character of those who perform the menial services of the great, they may deem themselves degraded to the condition of slaves, without the right of exercising an opinion of their own, and thereby completely subservient to the nod of their imperious employers. But, sir, this is not the condition of the labouring class in the country—I appeal to the honourable members living in the interior, whether the labouring class about them, though poor, are not generally as a body of men, discreet and independent in the exercise of their political rights ? There are individual exceptions, I confess, among the poor, as well as the rich—But they expect the most of them soon to become freeholders—If they are not to be trusted safely, how happened both branches of the legislature, the senate

and the council of revision, too, to pass a law recommending a Convention, in which the privilege of voting for delegates was extended, so as to embrace all who perform military duty; when it was well known that an extension of the right of suffrage was in contemplation? The truth is, our experience thus far under our present constitution, pointed to this as one of its material defects.—The experience of our neighbouring states which have no such provision, warrants the conclusion, that our fears of innovation in this case are wholly groundless. It is said (by the honourable Chancellor) for upwards of forty years, under this constitution we have increased in population, wealth, and importance, with an astonishing rapidity, and that we ought to be contented without seeking an extension of privilege by innovation—So while a colony of Great-Britain we grew and flourished exceedingly, and some were then of the opinion, and no doubt honestly of the opinion, that it would have been wise not to have changed our situation—Will it be pretended that, that opinion was correct? In that, as in many other cases, experience has demonstrated the wisdom of innovations in governments when they can be materially improved. In view of these considerations, sir, I hope and trust that this amendment will not prevail.

Mr. Burroughs spoke a few words in opposition to the amendment proposed by the Chief Justice.

Mr. E. Williams. Mr. Chairman, although I have hitherto been a silent, I have not been an inattentive member of this Convention. I have not only listened with pleasure to the eloquence which has been poured forth from every quarter of the house, but I have drawn instruction from the wisdom, which has so profitably and on so many occasions occupied this floor. When I look about me, and perceive with whom I have the honour to be associated in the great task of constitutional reform, difficult and delicate as that task is, I cannot but feel that the united talents and learning of this august assembly is adequate to its accomplishment, and that the people have a right to anticipate an auspicious result from our labours. On every side I behold men, who have long filled the most elevated and arduous offices, and grown grey in the service of the state. A majority of this Convention have passed into the autumn of life—they come, laden with the fruits of experience, abundant in knowledge, mature in understanding. From such an assembly, all unruly passions must have been excluded, and the arts of the demagogue would here be unavailing. Happy is it for us and for those who shall come after us, that it is so; for, Mr. Chairman, the friends of rational liberty in all quarters of the globe have their attention fastened upon independent, confederated America; in the front rank of this confederacy, in the most conspicuous station, stands the great state of New-York, and the result of this Convention will decide her fate, perhaps for ever. Who, then, does not feel—who is there, who does not appreciate—the responsibility under which we act? Our proceedings, our opinions and votes, are placed on never-dying records; our character as patriots and statesmen, will be determined by the measures which we may here adopt; if those measures be stamped with wisdom; if they be conceived in the spirit of disinterested regard for the common good, and bear the impress of impartial justice, then that character will live in honour through ages yet unborn, and future generations will hold us in grateful remembrance. But, if the demon of party should be permitted to enter this hall, mingle in debate, and betray our judgments, then, instead of the blessings of our children for our wisdom and fidelity—instead of the unceasing gratitude of posterity for earnestly consulting their perpetual welfare, we should in a few short years, hear it said of us, as has been already said [by Mr. Tompkins] of the Convention of 1801—"it was a *party* Convention, called to subserve *party* interests—its measures were dictated by the tyrant, *party*—it defaced the fairest features of our constitution—it prostrated the proudest pillar of our government." How unwise, then—how short-sighted is that man, who seeks to advance the temporary interests of a political party, by the permanent provisions of a constitution of government! Party is the gourd of a day; it may flourish in the night of deception, but it must wither in the light of investigation, and under the full beams of risen truth, it dies and is forgotten. But the constitution remains—if a bad one, to scatter curses through society—if a good one, to confer equal blessings upon

all, and transmit them, with augmenting weight, from age to age.—The constitution, sir, is the heart of the republic—the source of political life; from it issues the blood that nourishes and warms the remotest members of the political body: it is the sun in the centre of the political system; around it the legislative, executive, and judicial powers revolve in their proper orbits, imparting light and life to the great elements of social prosperity and happiness—the manners, habits, and customs, the education, morals, and religion of the people, giving to them protection and perpetuity.

We are not, Mr. Chairman, now just emerging from the savage state; we have a government, founded on social compact: a portion of our natural rights has been surrendered, and sovereignty, which in the state of nature equally appertained to all, has been concentrated, and vested in a portion of the people, for the common benefit and protection of the whole. The sovereign power of the state is, indeed, comprised with, but it is by no means accurately described by the term, the people. This term in its general and most comprehensive signification, embraces the whole population—all that portion of the human family, which is comprised within the limits of the state. But as the great object of the exercise of sovereignty is the general good, it never has been, in fact, and all will admit that it never ought to be, in theory, committed to the people, in this extended acceptation of the term. It ought not to be so committed, because the young and inexperienced, those who are helpless and dependant, by nature and inevitable necessity, as well as by civil institution and legal contract, cannot be, and never have been supposed, in the most extravagant theories of equality, capable of expressing their wills independently and intelligently. Thus, by the universal consent of mankind, one half, and truth no less than politeness, compels me to add, the better half of the whole human family, is at once and utterly excluded from any participation of sovereignty. The male population we again divide, excluding all infants; and from the remaining portion we subtract all foreigners, all paupers, and all felons; until we find sovereignty reduced, and that too, by common consent and universal custom, from a population, in the case of our own state, of upwards of thirteen hundred thousand souls, into the hands of about one hundred and fifty thousand free male citizens, who are the actual, legitimate sovereigns of the state, and who constitute but about one tenth of its entire numbers. If it be true that all persons are born equal in political rights, possessing equal portions of legitimate sovereignty, how happens it that nine-tenths of our fellow legitimates are dethroned, and we, the one-tenth, are declared the rightful sovereigns of this free and independent state? If the right of self-government were, as some gentlemen seem to consider it, not only a natural, but an unalienable right, it would follow that, by nature and by Providence, it had been bestowed equally upon every individual of the human race, and that by no act could a portion lawfully assume to itself the attribute of sovereignty conferred alike on all; it would be usurpation; it would be tyranny.

In this country, and in this state, the people have selected, from all the forms of government known to civilized man, an *elective republic*. No doubt they have selected with unrivalled wisdom; but, in establishing a constitution and fundamental laws, they have found it necessary even here to limit the number of those, in whom the sovereign power shall rest, and to pronounce what portion of the whole, will be most likely to exercise it with wisdom, with justice, and for the promotion of the public welfare.

We are the representatives of the sovereign power of this state, deputed to examine the constitution, to suggest and recommend such alterations as we believe the public good demands; which, when adopted by the people, shall become fundamental, shall bind the power from which itself derives its authority, and become the charter of freedom and security to all who come within its jurisdiction.—Some gentlemen have reminded us of the position that government is instituted for the protection of life, liberty, and property, and insisted upon it, as if it were a new position, and as if, when once established or admitted, it put an end to argument and settled the whole question. But, most surely, it does not follow that all who are protected by government, or entitled to its protection, are also entitled to a voice in the designation of the men who ad-

minister that government. All have lives to be protected; but all living are not, therefore, entitled to become electors. All are entitled to civil and religious liberty—the minor as extensively as the adult—the female as extensively as the male—yet they have not all a voice in choosing their rulers; many a female, as well as many a legal infant, is in possession of large estates, but they cannot vote. No, sir, the mere statement of this general truth, important as it is in the abstract, and admitted as it is by all, helps us not one step onward in the argument; the question, the great practical question, is still to be put, in what manner shall this great end of government, the protection of life, liberty, and property, be best accomplished? It certainly cannot be accomplished by consulting *one* of these great objects of social care, to the neglect of the rest. No, sir, and while I would not, on the one hand, bestow exclusive favour upon the possessors of mere wealth, nor graduate a man's political power by the extent of his property, I would not, on the other, bestow all my care upon simple, unaccommodated life and liberty, or neglect the protection of those accumulations of industry and bounties of Providence, which give to life and liberty so much of their value—so much of their charm to the individual, and so much of their utility to society. I would endeavour, sir, to consult all these objects in due proportion; I would endeavour to unite the attachment to life, which is so deeply implanted in the nature of man—the love of liberty, which is so thoroughly interwoven with our rational faculties—and the love of property, without which, civilized and social life could not be enjoyed—I would endeavour to unite all these great principles of action in support of that government, which I would render the equal guardian of them all.

But we have been told, sir, that gentlemen have pledged themselves on this question; and that they cannot and dare not vote against *universal suffrage!* If such gentlemen there are upon this floor, of them I ask, why all this pageantry, this mockery of debate? Why do we spend our nights in reflection, and our days in laborious discussion? or why express the reasons of our conduct? Are not our arguments intended to illumine our understanding and convince our judgments? This conflict, sir, is alike unequal and unprofitable. Is it treating this Convention fairly, for any gentlemen to come with their minds cased in impenetrable armour, while they are permitted to hurl the thunders of their eloquence, and dart the lightning of their wit, at our open, unsuspecting, undefended bosoms?

It has been objected that the question now under debate, has been determined by the people, and that nothing remains for us but to register their decree; and one gentleman has declared, "he was instructed by his constituents, and he should be ashamed to go home and tell them, he had heard new arguments at Albany, which had convinced him that he and they had long been in error." Sir, my constituents have sent me here with no such instructions. They expect their delegates will calmly and deliberately examine the various important subjects which shall come before this Convention; and they will be better, far better pleased, that we pursue the broad road of duty, which the expanded wisdom of this august assembly may lay open, than the narrow path which they themselves had discerned at home.

Gentlemen say the people have settled this matter in their primary assemblies. *Vox populi vox dei.* But the worshippers of this deity have, certainly, a right to know his commands; and they cannot reasonably be censured for hesitating to obey injunctions of which they are ignorant. Before I can believe that the resolutions of the primary assemblies beyond the Genesee river, are binding upon the freeholders of Suffolk, I wish to know how their meetings were got up, and by what class of the community they were attended. Will gentlemen inform us what were the topics of argument urged at those meetings, and whether the resolutions there adopted, were the cause or the consequence of those arguments. What were the sound and unanswerable reasons which induced the yeomanry of the country to surrender a portion of their sovereignty, and divide their inheritance with those who have neither property nor character? Sir, the people of this country do not settle their rights in this manner; they have not fully examined this matter; they have made up no opinion; much less have they expressed any wish to control and govern our conduct.

Gentlemen have triumphantly asserted, that a majority of seventy thousand freemen, who called this Convention, have declared that this odious distinction in favour of the freeholders of our country, should no longer disgrace the records of liberty. It was only yesterday that this same seventy thousand sent us hither to abolish the council of revision; to-day, the seventy thousand called this Convention for the sole purpose of taking from the freeholders their dangerous power of electing the senate. Each gentleman seems to believe that the amendment, which *he* desires, is the great object for which the Convention was especially called, and he marshals his seventy thousand in support of his proposition. Sir, this Convention was called for, by a vast majority of the people of this state, not because they wished to change the seat of sovereignty—not because they wished the constitution demolished and its fragment scattered by the blasts of party—nor even because they believed their constitution so generally defective, that no part of it would answer the end of wholesome government, and wished to change it entirely for another; but because they perceived that, in one particular, however plausible in theory, it was baneful in practice. The executive had repeatedly called the attention of the legislature to the appointing power. That power was lodged in such hands that no change could make our situation worse. On this subject the public mind was deeply, extensively agitated. The council of appointment had attracted the scrutinizing attention of every portion of the state. It was distinctly seen and felt that our legislators were no longer nominated and elected for their virtue, intelligence, and general fitness to enact wholesome laws; the people no longer sent to the senate men venerable for their experience and valuable for their wisdom. The fountains of legislative authority had been corrupted; the primary assemblies had been called, not for the sole and legitimate purpose of selecting for nomination to office the best and wisest citizens, but to designate those who would best carry into effect the objects of party; those, who could be relied on as fit instruments to fill the council of appointment, and who would take and appoint from ready made lists, the tools and sycophants of faction. The assembly, too, has been chosen under the same pestiferous influence, men have been promoted, not for their general wisdom and acknowledged virtue, but as the pliant, faithful instruments of the master demagogue of the day. Their duties consisted in punctual attendance upon caucuses, and a careful, strict, habitual observance of the orders of some self-elected leader of his party, who has taken shelter, in the honours and emoluments of some secure and durable office, from the storm he had excited, but could no longer control. The effects of an appointing power, thus constituted, have been visited, in discord and confusion, upon every county in the state; and I wonder not that the people have shaken off their slumbers, and rising in their majesty, have declared, by a majority of seventy thousand, that this instrument of corruption—this engine of oppression—should no longer remain. It has sacrificed age, and talents, and worth upon the altars of party, and with unblushing profligacy, has elevated to stations of responsibility and trust, the ignorant, the weak, and the abandoned. Why, sir, in the county, which I have the honour to represent, this council has appointed as a magistrate, a man, who recently was convicted at a court of oyer and terminer in that very county, of hiring a miscreant to burn his neighbour's barn; and he was imprisoned there for his crime. Think you, sir, that the citizens of that county, who had so lately witnessed his trial and condemnation, and had seen him through the grates of his prison, expiating his guilt, think you *they* would have committed to such a man, by their votes, the administration of the laws and the guardianship of the peace? Would the respectable yeomanry of that county, think you, have degraded the freeman's ballot by making it the instrument of elevating to the seat of magistracy a gaol-delivered felon?

I admit, sir, there was another motive for calling this Convention—a motive which had a powerful influence, and greatly swelled this majority. The western and northern parts of this state, when our present constitution was adopted, were a wilderness. That wilderness is now filled with valuable citizens, who hold their estates by a tenure unknown at the adoption of that constitution. The settlers on the Holland Land Company's purchase, on the Pultney and Hornby estates, upon M'Comb's purchase, and in many other portions of the

western and northern counties, *hold under contracts for the purchase of their farms.* In many, if not in most cases, they have paid the greatest portion of the purchase money—cleared and cultivated their farms, and erected valuable dwellings; but, as yet, have not completed their contracts and received their deeds. In my judgment, these men have always been entitled to the right of suffrage, as "freeholders possessed of a freehold in their own right;" for this term, I contend, is used in the constitution in a *generic* sense, including both legal and equitable freeholders; and this construction has been given to the constitution, by every branch of the government. The act which declares that both mortgagors and mortgagees in possession should be deemed freeholders under the constitution and our election laws, could never have passed upon any other constitutional ground, than that one was an *equitable*, the other a *legal* freeholder. If the title passed to the mortgagee, then he was the *legal* freeholder; and the mortgagor in possession, seized of the equity of redemption, was the *equitable* freeholder. If we adopt the modern doctrine, and declare the mortgage to be a security for money, then we regard the fee—the legal estate—as vesting in the mortgagor, and the mortgagee in possession as possessed of an equitable freehold: It is impossible the *legal freehold estate* should be in both mortgagor and mortgagee, at the same time. The act which requires persons holding their lands under these contracts, to serve on juries, is of the same character, and furnishes the same inference. Our constitution declares, that "trial by jury in all cases, in which it hath heretofore been used in the colony of New-York, shall be established and remain inviolate for ever." Now a jury must consist of twelve men; and the legislature had not the constitutional right to reduce the number, except in cases where it had been used in the colony; and by the same usage, those jurors must have been *freeholders* of the counties, or freemen of the cities. This act, therefore, would have invaded the constitutional guard of the trial by jury, if these men were not *equitable freeholders.* Furthermore—Their estates would pass under a devise of "all my freehold estate; it would descend to the heir, and in many cases it would be subject to judgments and executions as real estate. Taking the declaratory act, relative to mortgagors and mortgagees, which I have before mentioned, as a precedent, many gentlemen were desirous to pass another declaratory act expressive of the sense of the legislature, that *equitable*, as well as *legal* freeholders, were embraced in the term "freeholders," as used in the constitution. Many individuals, adopting the construction of the constitution, which I have here given, had exercised the rights of electors, while others, entertaining conscientious doubts, had not exercised those rights: and it was believed that a declaratory law passing the council of revision, would have removed all these doubts, and established a uniform exercise of the right of suffrage. But, sir, this law was defeated. The people were told, from high authority, that they had been *nicknamed* equitable voters—that they were remediless without a Convention—Is it then, wonderful that these people should unite, to a man, in calling a Convention to declare and establish their constitutional rights on a clear and certain basis? Would any man dare to assert that so hardy, enlightened, and virtuous a people ought not to possess and exercise the right of suffrage? They have families to protect, who have felt with them the privations, and endured the hardships incident to the first settlement of the wilderness—hardships which none but themselves can know. Their cultivated farms are now subjected to taxation, and they bear their full portion of the public burthens. In war they formed the exposed frontier of the state, and numbers of them were driven, in the blaze of their own dwellings, before the savage allies of a vindictive foe, to seek another shelter for the helplessness of wailing infancy and the decrepitude of tottering age:—their young men rushed to arms in defence of their country; and fathers who now hear me, were made childless by the conflict. Such, and so situated were the men who were told—"you are not *seized* of freeholds—you rent no tenement—you have no *vote* for the officers of your government, and no remedy but in a Convention." Sir, of the majority of the votes in favour of calling this Convention, thirty thousand are referable to this cause only.

Individual and isolated cases, however striking and interesting they may be, cannot be comprehended in the general provisions of a constitution. Virtue

and intelligence cannot in every case be insured access to the polls. Vivid and impressive as was the picture drawn by our President of the gallant officer, who died of a broken heart, because, as it would seem, he was not an elector, even a limited fancy might add to the apparent injustice of our country.—Suppose the gallant hero had been a youth of twenty years of age; is it proposed to embrace his case and make brave infants voters? Suppose him a foreigner, shedding his blood in defence of his adopted country; is it proposed to give him the right of suffrage? Suppose our hero the only son of his mother, and she a widow—her husband had fallen, in the establishment of the independence of his native land, and his son had laid down his life for its preservation—her property is all that Providence has permitted her to retain; is it proposed to permit her to guard that property with the electoral ballot? The influence of the female world is imparted with less ostentation, but not with less effect—Their song over the cradle wakes the first moral idea—on their lap the future hero first stands erect—their precepts and their smiles nerve the arm of the warrior, and inspire the tongue of the orator.

In organizing the government the whole mass of the population have granted the entire sovereignty of the state to one tenth of the whole number. The patriots and sages who formed our constitution, divided and balanced the powers of government in such a way as they thought most likely to secure to their posterity safety, liberty, and happiness. A portion of the people are chosen to discharge the duties of legislation—some are appointed to fill the benches of justice—some are charged with executive functions; and to a large body of the people is entrusted the exercise of the elective power. The duties of this electoral body are various, and they are separated into classes, that they may the better discharge those duties; to one class is assigned the duty of electing the senate and the governor; to the members of this class united with another, is assigned the duty of electing the assembly, and particular portions are directed to elect county and town officers. In this division of the powers and duties, the freeholders of the state have hitherto been charged with the election of the executive, and one branch of the legislative department of the government. For nearly thirty years, sir, I have been acquainted with this constitution; and have never, until last year, heard a lisp of complaint that this power was unwisely deposited, or unjustly executed. It is true that during the late war, there were some who contended that the governor, being the commander in chief of the militia, ought to be chosen by those who elected the most numerous branch of the legislature. I am well aware that appeals have been made to the pride of the soldier, and he has been significantly asked, if he did not think he ought to vote for his commander in chief—for the man to whose guidance he is subjected, and to whose skill and courage are committed his comfort in camp, and his life in the field of battle; and I may also admit, that individuals have been interrogated whether they did not wish to vote for or against our present chief magistrate; and in all these cases the answer has been, *O, yes.* But pursue the inquiry—put the question, "do you claim the right of electing the senate?" to an honest and discreet man, not being a freeholder, and he would answer, "*No.* Give me a voice in electing the most numerous branch of the legislature, and I am content."

All men, rich and poor, have the same personal rights of life and liberty, and it is therefore just that they should all, in these respects, be placed upon an equality; but some, in addition to these rights, possess property, which not only ministers to their own gratification, but, in numberless ways, more or less direct, contributes to the well being of their poorer neighbours, and nourishes the whole community; these men, therefore, have a greater stake in society, than I have, and it is but just that their influence should be more extended; they may vote for one branch of the legislature, and I will vote with them for the other, and for my commander in chief—it is a shield broad as my wants—a rampart strong enough to shelter me."

Mr. Chairman, we are here convened to *amend* our constitution, not to *destroy* it; and gentlemen are bound to show the part which they ask us to amend, to be really defective; and I call on gentlemen for an exposition of the evils which we have experienced from that provision, which commits the power of

electing the senate to those who are, thank God, in this favoured land, the real, legitimate lords of the soil.

The gentleman from New-York, (Mr. Radcliff,) has contended that, by nature, all were endowed with the right of suffrage ; and he calls upon us to show that universal suffrage would be dangerous to the best interests of the state. Sir, the burden of proof rests upon the gentleman himself, not on us ; the constitution on this occasion, holds the negative ; and I call upon him to point out the danger to be apprehended from the exercise of this elective power by the yeomanry of the country. Have the freeholders exercised it tyrannically ? Let their wide liberality—their expanded charities—give the answer.

We are called upon to confer this power on those who may exercise it discreetly. Do the freeholders wish to participate with those who merely do no hurt ? *Cui bono ?* For what end introduce them ? If they vote *with* the freeholders, they are not wanted ; if they vote *against* them, their power will be injurious to freehold rights. And who are these people who are to aid the freeholders in electing their senate ? On this subject, sir, I know I am liable to be misrepresented, and have already been so by anticipation, by those who have "the people" ever on their *tongues*, but who, I fear, have seldom carried them much lower. Who are they who will protect the landed interest of this state, better than its owners ; or better determine when a direct tax is necessary and proper to be imposed on their farms ; and better judges what laws are calculated to advance the agricultural interests of the state ? Sir, they are the ring streaked and speckled population of our large towns and cities, comprising people of every kindred and tongue. They bring with them the habits, vices, political creeds, and nationalities of every section of the globe ; they have fled from oppression, if you please, and have habitually regarded sovereignty and tyranny as identified ; they are men, whose wants, if not whose vices, have sent them from other states and countries, to seek bread by service, if not by plunder ; whose means and habits, whose best kind of ambition, and only sort of industry, all forbid their purchasing in the country and tilling the soil. Would the state be better governed—would the landed interest be better protected, by the suffrages of such men, than by the ballots of freeholders ? Mr. Jefferson has said, sir, that great cities were upon the body politic great sores. In mentioning the name of this illustrious statesman with commendation, I am aware that I may fall under the lash of the honourable gentleman from Richmond, for most certainly I have never been an admirer of the gun-boat system. But, however that may be, his old adherents and universal admirers, cannot object to his authority, because he may be cited by one, who has not assented to all his views ; and adopting his sentiment as already expressed, I would not, certainly I would not, if I could prevent it, carry, by absorption, the contents of those sores through the whole political body. These cities are filled with men too rich, or too poor to fraternize with the yeomen of the country ; and I warn my fellow freeholders of the dangers which must attend the surrender of this most inestimable of privileges—this attribute of sovereignty. On whom do the burthens of government fall, in peace and in war ? On you. Your freeholds cannot escape taxation—they cannot elude the vigilance of the assessor, and though encumbered to their whole value, they must pay on their entire amount. When danger threatens, to whom must you look for support ? Is your militia called for, he who has no interest in your soil, swings his pack, and is away, leaving the farmer and the farmer's son, to abide the draft, and defend the life, liberty, and property of themselves and the community. They are identified with the interest of the state. I would to heaven, the entire mass of the freeholders of this state were here present, to decide upon this all-important question—to determine whether they would wantonly cast away this saving power—this long-enjoyed attribute of sovereignty, granted to them, at first, by the whole population, and which would constitute the richest inheritance they could transmit to posterity. Among the blessings which a moderate portion of property confers, the right of suffrage is conspicuous ; and the attainment of this right, holds out a strong inducement to that industry and economy, which are the life of society. If you *bestow* on the idle and profligate, the privileges which should be purchased only by industry, frugality, and character, will they ever

be at the trouble and pains to *earn* those privileges? No, sir; and the prodigal waste of this invaluable privilege—this attribute of sovereignty—like indiscriminate and misguided charity, will multiply the evils which it professes to remedy. Give the people, to the extent contended for, one department of the government, as a means of security from possible oppression; but preserve, I conjure you, to the faithful citizen, as his best recompense—as the richest gem he can hoard—and as the sheet-anchor of the republic, the freehold right of suffrage for the senate. If the time shall ever come, when the poverty shall be arrayed in hostility against the wealth of the state; when the needy shall be excited to ask for a *division* of your property, as they now ask for the right of governing it, I would then have a senate composed of men, each selected from a district where he should be known, by the yeomanry of the country—by the men who, if I may venture upon the exquisite figure of the eloquent gentleman from Dutchess, "wake their own ploughs with the dawn, and rouse their harrows with the lark."

But we are told this distinction is odious, aristocratic, and perpetuating a privileged order. Has it come to this? Does the possession of a small farm, or a modest house and lot in town, render the owner odious in the eyes of the people? Who ever before heard of a privileged order of all the freeholders of the state—of an aristocracy of two-thirds of the whole body of the people—of 250 dollar aristocrats? The idea admits not of a serious refutation.

One argument which has been pressed upon this committee, I confess I never expected to hear in this hall; it is, that "the people *demand* this right;" that is to say, in point of fact, those who will not exercise their faculties and industry so as to make themselves owners of a real estate of $250 dollars, *demand* that you surrender to them rights which are now, and have been for more than forty years, attached to freeholds. Sir, if it be just and safe to confer this right, it should be bestowed gratuitously; nothing should be yielded to this menacing demand. If this demand were presented in a different shape—if you were called upon to bestow so much of your freeholds upon these unqualified demandants as would enable them to vote against you, would you advocate that claim—would you yield to it! I know, sir, that one honourable gentleman has pointed out the blessings which would flow from yielding this boon to our brethren in distress. He has witnessed the exultation of the patriot La Fayette, in the victory of republicanism over his own property. The honourable gentleman was taken, by the noble marquis, to the terrace of the splendid chateau of Le Grange. Before him, as far as the eye could stretch, lay the rich domain. "But yesterday," exclaimed the imperial republican, "but yesterday this vast territory was my property: it was dotted with cottages filled with my vassals: Mark the blessings of *la grande révolution;* those who were then hewers of wood and drawers of water, the vassals of my estate, are now the legitimate sovereigns of republican France—the lords of their own soil." How long, Mr. Chairman, if we yield to this demand, will it be, in all human probability, before those, who now modestly ask no more than a right to govern our property—they having none themselves to engross their attention, or require their care—will appear armed with the elective power of the state, to *consummate* to us, the rich blessings conferred on the vassals of Le Grange by the French revolution? If this surrender be now made, how long before a demand of the property itself may be expected? Never, Mr. Chairman, never, till now, have I understood that our dearest rights were at the disposal of those who might think proper to demand them. Really, sir, after the inventive ingenuity and resource which the honourable gentleman has so admirably displayed, in connecting with this discussion the marquis La Fayette, and the vassals of Le Grange, he could not, I think, have been in earnest, on a late occasion, when he declared "that the territory of debate had been trodden to a waste, that the garden of fancy was desolate, and that not a flower could be culled within its extensive borders." Who shall prescribe limits to the immortal mind? Who shall designate bounds to the imagination of man, when challenged to exertion? Not only did the honourable gentleman on my left, with infinite felicity of conception, confute the complaint which fell from his tongue, when he rose; but another honourable gentleman on my right (Mr. Duer) has furnished another

splendid example of the ever-springing vigour and versatility of the soul. He has showed us fancy personified, assuming the masculine, rise from this hall, pass the ocean with a stride, place one foot upon the Alps, and the other upon the Andes, and there, raising his giant form, and winding the bow-girt clouds around his head, shake his misty curls, and airy garland, in awful majesty.

But, sir, I am admonished that the hour of adjournment has arrived, and I must return from these wanderings. I will not trespass farther on the patience of the committee, which has been so kindly bestowed. I am sensible that the subject is far, very far from being exhausted; and many topics which I had intended to enlarge upon, I have not touched. I would have adverted to the practice of other states, and the great body of American constitutional law; I would have spoken of the character of our eastern brethren, as connected with their constitutions of government, and the subject of this debate, and would have endeavoured to show into what errors some gentlemen had run, by adopting their precedents literally without considering the difference between them and us, in the several circumstances of extent of territory, population, manners, and character: but the time will not permit. In conclusion, I can only exhort the people, in their majesty, to assert and defend the rights of property. The amendment will restore to the constitution a principle which has excited the admiration of the wise and prudent of every state, and which, if once abandoned, is lost for ever. We come not here to yield to public clamour, by whatever persons, and for whatever purpose it may have been raised. If we preserve the principle contained in the amendment, property will have its just weight in your government. Those checks and balances, wisely devised by the patriot sages who formed our constitution; those checks and balances, which the experience of nearly half a century has sanctified to the preservation of pure and undefiled liberty, and without which a well organized government cannot exist, will be perpetuated, and the rich inheritance of a stable and free government, received from our fathers, will be transmitted with increasing affection and reverence, as I confidently hope, to the latest posterity.

The committee of the whole then rose and reported progress, and the Convention adjourned.

TUESDAY, SEPTEMBER 25, 1821.

The Convention assembled at 9 o'clock. After prayer by the Rev. Mr. Mayer, the minutes of yesterday were read and approved.

THE ELECTIVE FRANCHISE.

On motion of Mr. N. Sanford the Convention resolved itself into a committee of the whole on the unfinished business of yesterday—Mr. N. Williams in the chair.

Mr. Van Buren, said he was opposed to the amendment under consideration, offered by the gentleman from Albany, (Chief Justice Spencer;) and he would beg the indulgence of the committee, for a short time, while he should attempt to explain the reasons, which, in his opinion, required its rejection. The extreme importance which the honourable mover had attached to the subject, and the sombre and frightful picture which had been drawn by his colleague, (the Chancellor) of the alarming consequences, which would result from the adoption of a course, different from the one recommended, rendered it a duty, which those, who entertained a contrary opinion, owed to themselves and their constituents, to explain the motives which governed them. If a stranger had heard the discussions on this subject, and had been unacquainted with the character of our people, and the character and standing of those, who find it their duty to oppose this measure, he might well have supposed, that we were on the point of prostrating with lawless violence, one of the fairest and firmest pillars of the government, and of introducing into the sanctuary of the constitution, a mob or a rabble, violent and disorganizing, as were the Jacobins of

France: and furious and visionary as the radicals of England, are, by some gentlemen, supposed to be. The honourable gentleman from Albany (the Chancellor,) tells us, that if we send the constitution to the people, without the provision, contemplated by the proposition now under consideration, it will meet with the scorn of the wise, and be hailed with exultation by the vicious and the profligate. He entertained, he said, a high personal respect for the mover of this amendment, and also for his learned colleague, who had so eloquently and pathetically described to them the many evils and miseries which its rejection would occasion; he declared his entire conviction of his sincerity in what he had uttered, his simplicity of character, he had himself so feelingly described, his known candour and purity of character would forbid any one to doubt, that he spoke the sentiments of his heart. But believing as he did, that those fears and apprehensions were wholly without foundation, it could not be expected, that he would suffer them to govern his conduct.

Permit me to ask, (said Mr. Van Buren) where are the wise men to be found, who it is supposed would pass a censure so severe on our conduct? Did the honourable gentleman allude to the wise men of the east--Throughout their dominions, not a constitution is to be found, containing, in form or substance, the provision contemplated by the amendment. Did he allude to their descendants in the west? In Ohio, and partially in Illinois and in Indiana? Their constitutions were in this particular as ours would be, if this amendment was adopted. Did he allude to those of the south? In none of their constitutions, nor in those of any state in the union (except North-Carolina) was such a provision as that proposed by the amendment to be found. In the constitution of the Union, too, which has been in operation long enough to test the correctness and soundness of its principles, there was no excessive freehold representation. That constitution was now the boast and pride of the American people, and the admiration of the world. He presumed there was not an individual in that committee, who would question the sufficiency of the general government, for the protection of life, liberty and property. Under this government, and the several state constitutions, the states had been, and continued to be, rapidly advancing in public improvements, and the nation was in the full fruition of the blessings of civil and religious liberty; every one was sitting quietly and safely under his own vine and fig tree, and every one enjoying, without molestation, the fruits of his own labour and industry.

It could not, therefore, fail to strike the mind of every man, that the great alarm, which had been attempted to be excited upon this subject, was entirely imaginary—certainly without adequate foundation.--Why, then, he would ask, had this appeal been made to the fears and apprehensions of the committee?

In the grave and portentous deductions, which the honourable gentleman, who supported the amendment, had drawn from the rejection of the amendment under consideration, the question raised by it, had been, in a great degree, disregarded, if not entirely lost sight of. The committee had been entertained with the most frightful conjectures, on subjects, if not wholly, certainly in a great degree, unconnected with the object of the amendment. They had been told of the present bad character, and worse propensities of a great portion of their present population—the demoralizing effects of great manufacturing establishments, which might, or might not, hereafter grow up among us, had been pourtrayed in the darkest colours—the dissolute and abandoned character of a large portion of the inhabitants of the old cities of Europe, and the probability of similar degeneracy in this happy land, had been represented in hideous deformity—And all the powers of eloquence, and the inventions of imagination, had been enlisted, to present to our view, a long train of evils, which would follow, from extending the right of suffrage to such a description of people. And all this had been done, to procure the adoption of the amendment under consideration. He would now put the question to the sober sense of the committee, and to the highly respectable and venerable gentlemen, who had thought proper to press these matters upon them in this stage of the discussion, with what propriety had this been done? Did the amendment raise the question, whether any, and what amount of *property* should be a requisite qualification for a voter? Whether contributions to the public for the protection of

property, in the shape of taxes shall be required? or whether personal services, either in the public defence, or for public improvements, should be deemed sufficient? These, he said, were questions brought into view by the report of the select committee, and on which, they would hereafter have to act, but they were not now under discussion. When they would come before them, then would the past, the present, and probable future character of the population of this state, be proper subjects for consideration.

From data, to be obtained in the comptroller's office, it might with safety be stated, that the personal property in the state, which was the subject of taxation, amounted to about one hundred and fifty million of dollars; and that the real estate was valued at two hundred and fifty-six millions. The true question, then, presented to the committee by this amendment, was, whether this one hundred and fifty millions of personal property, which annually contributed to defray the public burdens, and to promote public improvements; and which was not now directly represented in any branch, should be wholly excluded from representation in one branch of the legislature; and that the one possessed of most power, and by far the most important of the two. But this was not all.

By the census of 1814, it appeared, that of 163,000 electors in this state, upwards of 75,000 were freeholders, under $250, and all of them householders, who may possess any amount of personal property—men who have wives and children to protect and support; and who have every thing but the mere dust on which they trod to bind them to the country. And the question was, whether, in addition to those who might, by this Convention, be clothed with the right of suffrage, this class of men, composed of mechanics, professional men, and small landholders, and constituting the bone, pith, and muscle of the population of the state, should be excluded entirely from all representation in that branch of the legislature which had equal power to originate all bills, and a complete negative upon the passage of all laws; from which, under the present constitution, proceeded the power that had the bestowment of all offices, civil and military in the state: and above all, which, in the language of an honourable member from Albany, as a court of dernier resort, was entrusted with the life, liberty, and property, of every one of our citizens. This, said he, is, in sober truth, the question under discussion; and it would seem to him to be only necessary, that it should be fairly stated, and correctly understood, to secure its rejection. This was the grievance, under which so great a portion of the people of this state had hitherto laboured. It was to relieve them from this injustice, and this oppression, that the Convention had been called; and it was, and always had been, a matter of astonishment to him, that a reformation in this particular had been so long delayed.

There were two words, continued Mr. V. B., which had come into common use with our revolutionary struggle; words which contained an abridgment of our political rights; words which, at that day, had a talismanic effect; which led our fathers from the bosoms of their families to the tented field; which, for seven long years of toil and suffering, had kept them to their arms; and which finally conducted them to a glorious triumph. They were "TAXATION and REPRESENTATION;" nor did they lose their influence with the close of that struggle. They were never heard in our halls of legislation, without bringing to our recollections the consecrated feelings of those who won our liberties, or without reminding us of every thing that was sacred in principle.

It was, said he, but yesterday, that they afforded the strongest evidence of their continued hold upon our feelings and our judgments, by the triumph they effected, over the strongest aversions and prejudices of our nature—on the question of continuing the right of suffrage to the poor, degraded blacks. Apply, said he, for a moment, the principles they inculcate to the question under consideration, and let its merits be thereby tested. Are those of your citizens represented, whose voices are never heard in your senate? Are these citizens in any degree represented or heard, in the formation of your courts of justice, from the highest to the lowest? Was, then, representation in one branch of the legislature, which by itself can do nothing—which, instead of securing to them the blessings of legislation, only enables them to prevent it as an evil, any thing more than a shadow? Was it not emphatically "keeping the word of promise

to the ear, and breaking it to the hope? Was it not even less than the *virtual representation*, with which our fathers were attempted to be appeased by their oppressors? It was even so; and if so, could they, as long as this distinction was retained, hold up their heads, and, without blushing, pretend to be the advocates for that special canon of political rights, that taxation and representation were, and ever should be, indissoluble? He thought not.

In whose name, and for whose benefit, he inquired, were they called upon to disappoint the just expectations of their constituents, and to persevere in what he could not but regard as a violation of principle? It was in the name, and for the security of '*farmers*,' that they were called upon to adopt this measure. This, he said, was, indeed, acting in an imposing name; and they who used it, knew full well that it was so. It was, continued Mr. V. B., the boast, the pride, and the security of this nation, that she had in her bosom a body of men who, for sobriety, integrity, industry, and patriotism, were unequalled by the cultivators of the earth in any part of the known world; nay, more, to compare them with men of similar pursuits in other countries, was to degrade them. And woeful must be our degeneracy, before any thing, which might be supposed to affect the interests of the farmers of this country, could be listened to with indifference by those who governed us.

He could not, he said, yield to any man in respect for this invaluable class of our citizens, nor in zeal for their support: But how did this matter stand? enquired Mr. V. B. Was the allegation that they were violating the wishes, and tampering with the security of the farmers, founded in fact, or was it merely colourable? Who, he asked, had hitherto constituted a majority of the voters of the state? The *farmers*—who had called for, and insisted upon the Convention. *Farmers and freeholders!* Who passed the law admitting those, who were not electors, to a free participation in the decision of the question of *Convention* or *No Convention*, and also in the choice of delegates to that body. A legislature, a majority of whom were farmers, and probably every one of them freeholders, of the value of two hundred and fifty dollars and upwards! The farmers of this state had, he said, by an overwhelming majority, admitted those who were not freeholders, to a full participation with themselves in every stage of this great effort to amend our constitution, and to ameliorate the condition of the people: Could he, then, ought he to be told, that they would be disappointed in their expectations, when they found that by the provisions of the constitution as amended, a great proportion of their fellow citizens were enfranchised, and released, from fetters which they themselves had done all in their power to loosen? He did not believe it. Again, enquired Mr. V. B. Who are we, that have been chosen to perform this great, and he could not but think, good work? A great majority of us are practical farmers; *all freeholders*, and of no small amounts. Were they their own worst enemies? Could they be suspected of a want of fidelity to the freehold interest? No! The farmers had looked for such an event; they earnestly desired it. Whatever ravages the possession of power might have made in the breasts of others, they at least had shewn that they could 'feel power without forgetting right.' If any thing, (said Mr. Van Buren,) could render this invaluable class of men dearer and more estimable than they were, it was this magnanimous sacrifice which they had made on the altar of principle, by consenting to admit those of their fellow citizens, who, though not so highly favoured as themselves by fortune, had still enough to bind them to their country, to an equal participation in the blessings of a free government. Thus, Mr. V. B. said he understood their wishes, and he would govern himself accordingly; having the consolation to know, that if he should have misunderstood them, they would have the power of rescuing themselves, from the effects of such misapprehension, by rejecting the amendments, which should be proposed for their adoption.

But let us, said he, consider this subject in another and different point of view; it was their duty, and he had no doubt it was their wish, to satisfy all, so that their proceedings might meet with the approbation of the whole community; it was his desire to respect the wishes and consult the interest of all; he would not hamper the rich nor tread upon the poor, but would respect each alike. He would, he said, submit a few considerations to the men of property,

who think this provision necessary for its security, and in doing so, he would speak of property in general, dropping the important distinction made by the amendment offered between real and personal estate. Admitting, for the sake of argument, that the distinction was just, and wise, and necessary, for the security of property, was the object effected by the present regulation? He thought not; property was not now represented in the senate on the extent it was erroneously supposed to be. To represent *individual property*, it would be necessary that each individual should have a number of votes in some degree at least, in proportion to the amount of his property; this was the manner in which property was represented, in various corporations and in monied institutions. Suppose in any such institution one man had one hundred shares, another, one share, could you gravely tell the man who held one hundred shares, that his property was represented in the direction, if their votes were equal. To say that because a man worth millions, as is the case of one in this committee, has one vote, and another citizen worth only two hundred and fifty dollars in real estate, has one vote for senators, that therefore their property is equally represented in the senate, is, to say the least, speaking very incorrectly; it is literally substituting a shadow for a reality; and though the case he had stated by way of illustration, would not be a common one, still the disparity which pervaded the whole community, was sufficiently great to render his argument correct.

If to this it was answered, as it had been by the gentleman from Albany, (Mr. Van Vechten) that the amount was not material; that the idea of their representing freeholders would be sufficient; his reply was, that this purpose was already effected by the constitution as it stands. It now provides that the senators shall be freeholders; and that part of the constitution it was not proposed to alter. There was no objection to fixing the amount of the freehold required in the elected, and to place it on a respectable, but not extravagant footing. If, therefore, an ideal representation of property was of any value, that object was fully obtained without the amendment. But the preservation of individual property, is not the great object of having it represented in the senate.

When the people of this state shall have so far degenerated; when the principles of order or of good government which now characterize our people, and afford security to our institutions, shall have so far given way to those of anarchy and violence, as to lead to an attack on private property, or an agrarian law; to which allusion had been made by the gentleman from Albany, (Mr. Kent); or by an attempt to throw all the public burthens on any particular class of men; then all constitutional provisions will be idle and unavailing, because they will have lost all their force and influence. In answer to the apprehension so frequently expressed, that unless this amendment prevails, there is nothing to prevent all the taxes being laid on the real estate, it is only necessary to state, that there is no more in the constitution of the United States, than there will be in ours, if the amendment fails, to prevent all the revenues of the union from being raised by direct taxation. And was such a fear ever entertained for the general government? How is it possible for gentlemen to suppose, that in a constitutional regulation, under which all the states are enjoying the most ample security for property, an individual state would be exposed to danger?

It is only (said Mr. V. B.) to protect property against property, that a provision in the constitution, basing the representation on property, is, or ought to be, desired in one branch of the government. It is when improvements are contemplated at the public expense, and when for those and for other objects, new impositions are to be put upon property, then it is that the interest of different sections of the state come in contact—and then it is that their respective weight in the legislature, becomes important to them. As for instance, the question of the canal, although the west, the north, and the south might unite in favour of that improvement, and its support by taxation, if that should ever become necessary, the middle and north western parts of the state might not feel that interest, and contemplate that advantage from the measure, as to induce them to consent to be taxed for its support or creation. Again—if it should be proposed to relieve the state from burthens, by calling in the public

dues ; in that case, that part of your state from which they are due, would have an interest in the question different from the others; in the imposition, increase or decrease of duties on salt, for instance, the effect would be the same ; indeed, in all improvements at the public expense, the advantage must, more or less, be equal, while the monies to make them, are raised from the people at large. On such occasions the representation which the different sections of the state have, in proportion to the taxes they pay, may become material. To give to property its relative weight in such cases, in Massachusetts, where this subject has been examined and discussed with a degree of wisdom and research highly honourable to the character of the state, they have thought it wise to apportion their representation in the senate on the basis of the assessment list. Is this representation enjoyed in any reasonable sense, under the existing constitution? Let facts decide.

By the assessment lists in the comptroller's office, it appears that the southern district pays taxes on *one hundred and thirteen millions of dollars*—the western on *fifty-five millions* only—and yet the latter has *nine* senators, and the former only *six ;* and after the next apportionment the disproportion will be still greater. Again—the western district, he said, paid one fifth more tax than the middle, which pays only forty-five millions, and yet their representation in the senate was equal. Again—the eastern and middle districts possessed only one third of the wealth, and about three-sevenths of the population of the state, and they elect a majority of the senators. And, to conclude, the city of New-York alone, pays taxes on *sixty-nine millions of dollars*, being *twenty-seven millions* more than the whole eastern district—*twenty-four millions* more than the middle district, and *fourteen millions* more than the western district, and the western district sends nine senators—the middle nine, and the eastern eight, and the city of New-York *one*.

The representation, then, of property in the senate, under the existing constitution, was, he said, as it respected individual estates, wholly delusive, and as it respected the interest of property in the different sections of the state so flagrantly unequal as to destroy practical advantage to property from a representation of it, and not only so, but made it infinitely worse than if property was not professed to be represented at all.

Under the present constitution, as it now stands, said Mr. V. B. that inequality must and would continue ; and he would ask, whether it was desirable to retain this distinction as it now existed, and whether it was productive of one solitary advantage ? He thought not, and so he believed all reflecting men on examination, would likewise think. If it was not advisable to retain it, the next enquiry was, could it be altered ? could the Massachusetts system be adopted ? He would, he said, put it to the understandings of gentlemen, to say, whether, in view of public opinion as they knew it to be, and with a consciousness of the controling and omnipotent influence, which public opinion had, and justly had, in a country and government like ours, they supposed that the system could be improved.

I am convinced many reflecting men will say no; must say no ; there is no room for misunderstanding. Even in Massachusetts, where this now forms a part of their constitution, a re-apportionment of their senate was deemed necessary, and adopted by their Convention, and rejected by the people, by an overwhelming majority, while the abolition of the property qualification for the elector had met with their cordial support. It was rejected, because although the Convention were in favour of that system of apportionment, the people were opposed to it, and were determined that nothing farther should be done under it. If, then, in Massachusetts, where the regulation already exists, it cannot be much longer sustained, no sensible man would deceive himself with the hope that it could be adopted here now, nor ought it to be adopted by us, if it were practicable, for reasons not now necessary to give.

And what, he enquired had been its practical effects ? had they been such as to afford any additional security to property ? had the members of the senate, for years past, been more respectable for talents or integrity ? had they shewn a greater regard for property ? had they been more vigilant in guarding the public treasury than the assembly ?

The senate, he said, was the only legislative body in which he had ever had the honour of a seat; and he had been there from a very early age—almost all his political connexions had been with that body—his earliest political recollections were associated with its proceedings, and he had had, in some of its proceedings, as much cause for individual gratification as could well, under the same circumstances, fall to the lot of any man; notwithstanding which, and also the strong partiality he had always felt for that body, he could not say, that in the many years he was there, the sentiment ever occurred to him, that such was the case. On the contrary, a regard to truth constrained him to say, that every thing, which regarded the imposition of public burdens, and the disposition of public property, were more closely looked into, and more severely scrutinized by the assembly than the senate. The sense of immediate responsibility to the people, produced more effect on the assembly, than the consideration, that they represented those, who were supposed principally to bear the burdens, did in the senate; and such, he conscientiously believed, would always be the case. He asked the members of the committee, whether they believed, that there had been a moment for the last forty years, when a proposition in the assembly to make an unjust distinction between real and personal property, in the imposition of public burdens, would not have been hooted out of that body, if any one had been found mad enough to have dared its introduction? Why, then, he asked, alarm ourselves by fears for the future, which the experience of the past had demonstrated to be erroneous? Why disregard the admonitions of experience, to pursue the dubious path of speculation and theory.

He had no doubt but the honourable gentlemen who had spoken in favour of the amendment, had suffered from the fearful forebodings which they had expressed. That ever to be revered band of patriots who made our constitution, entertained them also, and therefore they engrafted in it the clause which is now contended for. But a full and perfect experience had proved the fallacy of their speculations, and they were now called upon again to adopt the exploded notion; and on that ground, to disfranchise, if not a majority, nearly a moiety, of our citizens. He said he was an unbeliever in the speculations and mere theories on the subject of government, of the best and wisest men, when unsupported by, and especially when opposed to, experience. He believed with a sensible and elegant modern writer, "That constitutions are the work of time, not the invention of ingenuity; and that to frame a complete system of government, depending on habits of reverence and experience, was an attempt as absurd as to build a tree, or manufacture an opinion."

All our observation, he said, united to justify this assertion—when they looked at the proceedings of the Convention which adopted the constitution of the United States, they could not fail to be struck by the extravagance, and, as experience had proved, the futility of the fears and hopes that were entertained and expressed, from the different provisions of that constitution, by the members. The venerable and enlightened Franklin, had no hope if the president had the qualified negative, that it would be possible to keep him honest; that the extensive power of objecting to laws, would inevitably lead to the bestowment of douceurs to prevent the exercise of the power; and many, very many of the members, believed that the general government, framed as it was, would, in a few years, prostrate the state governments. While, on the other hand, the lamented Hamilton, Mr. Madison, and others, distressed themselves with the apprehension, that unless they could infuse more vigour into the constitution they were about to adopt, the work of their hands could not be expected to survive its framers. Experience, the only unerring touchstone, had proved the fallacy of all those speculations, as it had also those of the framers of our state constitution, in the particular now under consideration; and having her records before them, he was for being governed by them.

But, continued Mr. Van Buren, we are told that the reason why the senators have not been more respectable, has been owing to the mode of their election, and that, if the districts are reduced in size, the representation will be improved. This, he considered, in every view of the matter, incorrect. Some gentlemen had insinuated that they had heretofore been nominated in Albany. In this he presumed they were not sincere, and if they were, he could see no rea-

son why that could not as well be done for the counties as for a large district. He should suppose it would be less difficult to manage the Convention of a single county, than that of a whole district. But further, the senators are now as much nominated by the counties as they then would be.

How would they be chosen if confined to the counties? Meetings of the respective parties, which now, and always will exist, would be held; and at such county meetings the candidates for senators would be nominated. As the districts now are, the candidates, in some cases, are nominated at district Conventions. The delegates to these conventions, are chosen at county meetings, and instructed who to nominate from the respective counties, and the instances were rare in which such instructions were disregarded. The mode of their nomination, therefore, would be in effect the same.

But was it not probable, said he, that the increase of the senatorial districts to the number of senators, as intended by the mover of the amendment, would lessen the respectability of the selections. Parties would always exist, and they would always consult their interest in the selection of candidates for public places. Their first and chief object was success: to ensure that, they would, when in large districts, select a man whose standing and talents were such as to render it probable that his name would be acceptable in remote parts of the district, whilst if the election was confined to a small district, they might be induced to reward a favourite for mere party services, when confident that there would be no danger in the attempt.

But this was not the only point of view in which the notion of small districts would interfere with the arguments in support of the amendment under consideration. One which had been urged by the honourable mover, and one which was entitled, perhaps, to most consideration, was the propriety, if not necessity, of making the two branches of the legislature, as different in their creation and organization as is practicable, to ensure the advantages to be derived from having two branches. In this point of view, the circumstance of representing different counties and territories was of no mean value. Members of the assembly were not unfrequently much concerned in the advancement of the local interests of their respective counties. And in all such cases, if they and the senators represent the same men, their feelings and influence in regard to every matter relating to their respective counties, would be the same. But if not—if the senator was the representative of a district composed of a number of counties, he would feel his responsibility encreased in proportion to the extension of his trust: and he would act upon, and as far as was practicable, reconcile the clashing views of the members from the different counties in his district.

The expectation, therefore, that the senate would be improved by any thing to be done on the score of districts, was, he thought, without foundation; and the question under consideration, should be tested under a conviction that the provision contended for, would, for the future, produce as much effect as it had for the past, and no more.

If, then, it was true that the present representation of property in the senate was ideal, and purely ideal, did not, continued Mr. V. B. sound policy dictate an abandonment of it, by the possessors of property? He thought it did; he thought so because he held it to be at all times, and under all circumstances, and for all interests, unwise to struggle against the wishes of any portion of the people—to subject yourselves to a wanton exposure to public prejudice, to struggle for an object, which, if attained, was of no avail. He thought so, because the retaining of this qualification in the present state of public opinion, would have a tendency to excite jealousy in the minds of those who had no freehold property, and because more mischief was to be apprehended from that source than any other. It was calculated to excite that prejudice because not requiring sufficient to effect the object in view, it, in the language of Dr. Franklin, "exhibited liberty in disgrace, by bringing it in competition with accident and insignificance."

But, said Mr. V. B. we have been referred to the opinions of General Hamilton, as expressed in his writings in favour of the constitution of the United States, as supporting this amendment. He should not detain the committee by adding any thing to what had been said of his great worth, and splendid talents

He would omit it, because he could not add to the encomiums which had been delivered on this floor, on his life and character. The tribute to departed worth had been justly paid by the honourable gentlemen from Albany and Orange, (Messrs. Spencer and Duer.) But there was nothing in the Federalist to support the amendment:—Without troubling the committee by reading the number which had been referred to, it would be sufficient for him to say, that it could not be supposed, that the distinguished men who had done a lasting benefit to their country, and had earned for themselves the highest honours, by the work in question, could have urged the propriety, of a property representation, in one branch of the legislature, in favour of a constitution, which contained no such provision. They had not done so.

We were, said Mr. V. B. next referred by the honourable mover of the amendment, to the opinion of Mr. Jefferson, as expressed in his Notes on Virginia. In making that reference, the honourable gentleman had done himself credit; and had rendered but justice to the merits of the distinguished individual, whose opinion he had sought to enlist on his side. He had truly said, that now, when the strong party feeling which attended the public measures in which Mr. Jefferson was an actor, had in some degree subsided, most men united in the acknowledgment of his deserts. That sentiment, however, it appeared, was not general, since the gentleman from Columbia (Mr. E. Williams) distinctly avows, the retention of his old prejudices. Whilst that gentleman was trumpet-tongued, in denouncing the impropriety of indulgence, in party feelings by others, he had given them the strongest reason to believe, that his own were immortal; that they had not only survived the "era of good feeling" through which we had passed, but were likely to continue. But that notwithstanding, he still thought of Mr. Jefferson, as he always had done, he would condescend to use him for the occasion. Sir, said Mr. V. B. it is grating to one's feelings, to hear a man, who has done his country the greatest service, and who at this moment occupies more space in the public mind, than any other private citizen in the world, thus spoken of. But no more of this.

Mr. Jefferson did complain, in 1781, of the constitution of Virginia, because the two branches of their legislature were not sufficiently dissimilar, but he did not point out the mode in which he thought that object could be best effected.

In 1783, when, as he had before stated, a convention was expected in Virginia, he prepared a form of government to be submitted to the people, in which he provided the same qualification for both branches, and shewed clearly, either that his opinion had undergone a change on the subject, or that he supposed the object would be effected by the difference of their term of service, and the districts they represented.

The next consideration which had been pressed upon the committee by the honourable mover of the amendment, was, the apprehension that the persons employed in the manufactories which now were, or which, in the progress of time, might be established amongst us, would be influenced by their employers. So far as it respected the question before the committee, said Mr. V. B. it was a sufficient answer to the argument, that if they were so influenced, they would be enlisted on the same side, which it was the object of the amendment to promote, on the side of property. If not—if they were independent of the influence of their employers, they would be safe depositories of the right. For no man, surely, would contend that they should be deprived of the right of voting on account of their poverty, except so far as it might be supposed to impair their independence, and the consequent purity of the exercise of that invaluable right.

The honourable gentleman from Albany, (Mr. Spencer) had next directed their attention to the borough elections in England, as evidence of the consequences which might be expected from the non-adoption of his amendment. Mr. V. B. said he could not, in his view of the subject, on the most mature reflection, have selected an argument better calculated to prove the amendment to be unwise and improper, than this one, on which the gentleman mainly relied for its support. What, sir, said he, was the cause of the corruptions which confessedly prevail in that portion of the representation in the parliament of

Great Britain? Was it the lowness of the qualifications of the electors, in comparison with the residue of the country? No. In many of the boroughs a freehold qualification was required; in most, that they should be burgage holders; and in all, that they should be freemen, paying scot and lot. Compare, said Mr. V. B. these qualifications with those required in Westminster, and it will be found that the lowest of the former are equal to the latter. It could not be necessary for him to say, that if the will of the people prevailed in any election in England—if patriotism and public spirit was sure to find its appropriate reward any where in that country, it was at the Westminster elections. The qualifications of the electors, therefore, was not the cause, except it was in some instances where the election was confined to a very few, as for instance, to the mayor and common council of a borough. But I will tell you, sir, said Mr. V. B. what is the cause—it is because the representation in question, is a representation of things, and not of men—it is because that it is attached to territory, to a village or town, without regard to the population; as by the amendment under consideration, it is attempted here to be attached to territory, and to territory only. Suppose, for a moment, that the principles on which the report of the select committee is based, and which the amendment opposes, should be applied to the representation in the parliament of Great Britain—that instead of her present representation, it should be apportioned among all their subjects who contribute to the public burthens? Would you hear any complaints in that country on the subject of their rotten boroughs? No, sir; but on the contrary, that reform in parliament would be at once obtained, for which the friends of reform in that devoted country have so long contended, and which they probably never will obtain, except (to use the language of the gentleman from Albany) at the point of the bayonet. He could not, therefore, but think that the illustration resorted to, by the honourable mover of the amendment, was most unfortunate to his argument, nor ought he to withhold his thanks for the suggestion.

There were, continued Mr. V. B. many, very many, considerations, besides these he had noticed, which could, with propriety and profit, be urged on this occasion, to shew the impropriety of the amendment. There were several which it was his intention at first to urge. He had designed too, to notice some of the remarks which fell from the gentleman from Columbia, (Mr. Williams,) but as he was not certain that what he should say, would produce that state of feeling necessary on so interesting a subject, he would omit it. The time which he had already occupied—the very flattering attention with which the committee had listened to him, an attention demanding and receiving his utmost gratitude, induced him to forbear from trespassing further on their patience. The great importance, therefore, of having various interests, various talents, and men of various pursuits, in the senate, to secure a due attention to, and a perfect understanding of, the various concerns to which legislation might be applied in this state, the origin of the freehold requisition in England and here, together with the reasons why that distinction, though proper at the time of the adoption of our constitution, had almost entirely ceased to be wise or just: and also the causes which must inevitably render it in a short time, in our country at least, very unnecessary and ineffectual, together with topics like those, he would leave to the very judicious remarks which had already been made, and to such as might hereafter be made by others.

If he could possibly believe, added Mr. V. B. that any portion of the calamitous consequences could result from the rejection of the amendment, which had been so feelingly pourtrayed by the honourable gentleman from Albany, (Mr. Kent,) and for whom he would repeat the acknowledgment of his respect and regard, he would be the last man in society who would vote for it. But, believing, as he conscientiously did, that those fears were altogether unfounded; hoping and expecting that the happiest results would follow from the abolition of the freehold qualification, and hoping too, that caution and circumspection would preside over the settlement of the general right of suffrage, which was hereafter to be made, and knowing, besides, that this state, in abolishing the freehold qualifications, would but be uniting herself in the march of principle, which had already prevailed in every state of the union, except two

er three, including the royal charter of Rhode-Island, he would cheerfully record his vote against the amendment.

Mr. Edwards followed in the debate, and spoke at considerable length on the same side of the question.

Judge Van Ness said, this was a question on which every member should have the privilege of expressing his sentiments; and before it was decided, he felt it incumbent on him to assign the reasons which would govern his vote. He should need the indulgence of the committee, as it was many years since he had attempted to speak in a deliberative assembly; and he felt that he was trespassing upon the patience of the house, already weary of a protracted debate.

The gentleman from New-York (Mr. Radcliff) had laid down the general principles, upon which all questions of this nature must be decided. It is a right inherent in the people, who in a free state constitute the sovereign power, to establish such a form of government, as they shall think the best calculated to secure life, liberty, and property. These are the three great objects for which all governments are instituted, and to which all minor considerations should bend. If the security of these primary objects required, that a class of the community should be excluded from a participation in the affairs of government, they had no just grounds of complaint; provided such an exclusion was conducive to the general welfare. It had never been considered a hardship, that females, minors, foreigners, and convicts, should be excluded from taking any part in the administration of the government. Public policy required the discrimination, and it never had been a subject of complaint.

The framers of our present constitution endeavoured to accomplish the three great objects which had been mentioned: but the people, supposing that in some respects these ends were not as perfectly secured as they might be, had sent us here to revise the existing constitution, and to make such alterations as a long experience, and the changes in the circumstances and condition of the state, have rendered necessary.

The committee on the right of suffrage have made their report, by which they recommend the abolition of the present qualifications of electors; and the amendment, now under consideration, is supposed, by some members of this Convention, to be preferable to the qualification stated in that report. What was this amendment? To revive the recollection of the committee, and that they might the better understand the bearing of his remarks, he would take the liberty to read it. [Here Mr. V. N. read the amendment offered by Mr. Spencer, and dwelt sometime on a comparison between its provisions, and those of the amendments offered by Mr. Root, and the report of the select committee.] He then adverted to the qualifications of voters, as fixed by the present constitution; and thought, we should be fully satisfied that the regulation was injudicious and imperfect, before we proceeded to make any alteration. We had lived forty-four years under the present constitution: and during this long period, he did not know that there had been any serious complaints on this subject. The state continued to flourish, and the people were contented and happy. There were, however, some defects in the present regulation of the right of suffrage, which the amendment would rectify.

The existing constitution excludes all leaseholders and equitable freeholders. In relation to the latter, he entertained a different opinion from that which had been expressed by his colleague, (Mr. Williams,) for it was his opinion, that those who had been termed equitable freeholders, holding merely under contracts executed by the landholders, were not entitled, as the constitution now stands, to vote even for members of assembly. So far, then, from restricting the right of suffrage, the amendment under consideration would extend that right to that vast body of citizens in the northern and western counties, who had been denominated equitable freeholders, and to those leaseholders who held for a long term of years. Of the latter class were numerous lessees of the Trinity church, in the city of New-York; and those lessees, in various other parts of the state, who not unfrequently held leases for the term of 999 years; and of course were vested with a more valuable interest in the estate,

than a man holding for the term of his own life, or the life of another, which in law was denominated a freehold.

An idea had been suggested, that the amendment was calculated to raise up a privileged order. It was certainly a very extraordinary privileged order, which should include nine-tenths of the people : for to such a proportion of the the community he believed the amendment would extend. It includes all the farmers and respectable mechanics : for it is a fact which he might confidently urge, that a large proportion of mechanics in the cities and villages, and nearly all in the country are freeholders. It also induces every man who resides amongst us, to acquire the privilege of voting, by pursuing a course of industry and frugality. And if the owner of personal property values the right of suffrage, it is easy for him to acquire it by converting some small portion of his personal property into real estate.

From the statement that has been presented to the committee by the honourable gentleman from Otsego, (Mr. Van Buren) it might be implied, that the owners of the soil owned no part of the one hundred and fifty millions of personal estate which he had referred to. The fact, however, was otherwise ; for he confidently asserted, that taking the state at large, even including the city of New-York, with its vast commercial and banking capital, and the holders of government stock, the owners of the real estate yet own nineteen-twentieths. Who, then, would be excluded from the right of voting if this amendment were adopted ? Those, and those only, who have no property, and of course no interest in the government. And from what part of the right of suffrage would even this class be excluded ? From the election of senators alone. After this slight deduction, if the proposition of the gentleman from Delaware should be adopted, every male citizen above the age of twenty-one, who has a permanent residence in the state, would enjoy the privilege of voting, 1st, for governor ; 2d, for members of the assembly ; 3d, for town officers ; 4th, for a great number of town and county officers, now appointed by the council of appointment, if the appointing power should be sent back to the people, as is contemplated, and as he hoped would be the case. It appeared to him that the exercise of the right of suffrage, in these numerous instances, would be as much as this class of citizens had a right to claim from their interest in the government, and as much as they ought to ask or wish ; leaving the senate to be elected by the owners of the soil.

He dwelt for some time upon the importance of the senate, and the propriety of the qualifications, as proposed by the amendment. We require jurors to be freeholders ; and should there not be an equal responsibility in those who elect the senate, which is not only the most important branch of the legislature, but also the highest judicial tribunal in the state ? Life, liberty, and property were at their disposal, as a court of final jurisdiction, and he could not conceive of a more important body.

He warned gentlemen of doubtful and dangerous innovations. The principles of liberty were here, and here only understood and enjoyed. They have had a sickly and feverish existence in other countries ; but America was almost the only nation on the globe that possessed the blessings of rational freedom. It was the chosen residence of liberty. and we should beware how we sported with the boon, lest by striving for too much, we should lose the whole. We did not come here to introduce or establish republicanism—that had already been done by our fathers, who achieved the revolution, and framed our present excellent constitution ; and it was our business to preserve it.

One of the most important and delicate exertions of the legislative power, was undoubtedly that of taxation ; and on what class do the burthens of government principally fall ; On the landed interest, because they are the owners of the largest proportion of the property of the state. This is well known, and was felt, not only in peace, but during the late war. A debt of two or three millions has also been created for the construction of the canals. The expenses of the government were also heavy : and large sums had been loaned to individuals, much of which had been lost, All this must necessarily fall on the landed interest. During the late war, a tax upon real estate was the final resource, and the one mill tax has since been paid by the freeholders. In other respects the

said of the freehold interest was most essential in time of war. Much had been said about the services of the militia: but what, he asked, would the militia be, without money to pay them, and to purchase implements and munitions of war? When men are called upon to fill the ranks, where are they to be found? When regiments are called out, the freeholders, and sons of freeholders, and mechanics are at hand. They have homes which they cannot desert, and they, therefore, stand the draft, whilst the transient character swings the pack that contains his all, and leaves the country to take care of itself. Money may hire them to act as mercenary substitutes, but neither law, nor a sense of duty, can urge them into battle. The real and efficient security of the country, therefore, in time of war, even in its physical strength, is to be found in the freehold interest.

Gentlemen would recollect the fact, that at one period during the late war, the general government found itself not only destitute of funds but of credit. Then it was that our patriotic militia were called on to defend the country, and the finances of the state appropriated to equip, clothe, and support them: and then it also was, that the credit of the general government was re-established by imposing a heavy tax upon the real estate of the nation.

There was another consideration which with him had great weight. It is a fact which has no trifling bearing on the question now under discussion, that every nation extensively engaged in agriculture, commerce, and manufactures, has in it two great and rival interests, which grow out of these combined pursuits. These were the monied and landed interests. The past and present condition of Great Britain evinced this fact; and the lines between them were as distinctly drawn, as between the sexes. It was in the nature of man, that the object of his labour should become dearer by the pursuit. The late William Pitt was charged with favouring the monied interest, and had created a large debt, which devolved on the landed interest to pay; and the agricultural interest in that country was still depressed in consequence of being compelled to defray not only the ordinary expenses of the government, but also to meet the interest on the enormous amount, which has been added to the national debt by him and his successors in power.

The monied interest was generally the most powerful. It had been so even in Great Britain. In our constitution, it was peculiarly represented in every department except one, the senate; and in that he thought it was wise and politic to give to the landed interest an influence to check, in that single instance, the monied interest, which might otherwise impose all the public debts and burdens, on the landed interest. He did not appeal to the farmers, or to any particular class of men, but to the good sense of all. The senate could invade the rights of no man. It would obtain no increase of positive power; but in the hands of farmers might become a salutary check to encroachments by a rival and formidable interest. This was a safe depository. There was more virtue and patriotism; more wisdom and moderation, in the middle than in any of the other ranks of society. They were not ordinarily zealous partisans. They are the patrons of your institutions, civil and religious. They build your churches and defend your altars, and the country of which they are the protectors. They erect your school houses; found and support your colleges and seminaries of learning; establish and maintain your charitable institutions; and construct your roads and canals.

It had been said, that there was no danger of combinations. Perhaps that danger was not extensive and alarming at present; but as we advance in wealth and population, we follow in the wake of other nations. Look at Great Britain. Do not the monied interests combine, and absorb, and array all the respective forces they can gather? Even in our own country, is there not a question now pending before the general government, in relation to the tariff, in which the manufacturing and commercial interests are arrayed in hostility to each other, and are actively engaged in rallying forces under their respective banners? The country is convulsed with the agitation of this question, and it is supposed by many, that it will at no distant period produce an entire change of political parties, equally exasperated against each other as those which now exist.

It had been said that the amendment savoured of aristocracy. What is aristocracy? It is the exercise of the powers of government by a few. But the amendment would embrace nine-tenths, if not nineteen-twentieth of the adult male population, who have a permanent home in the state. So far, then, from favouring an aristocracy, it went to the establishment of a government directed by the many.

The virtuous middling classes may thus hold the balance between, the profligate poor and the profligate rich. They form the balance wheel of the political machinery. They cannot be conspirators; they are too many in number; and spread over too wide a space of territory. The days and dangers of aristocracy and monarchy are gone by. Those powers in the state governments most liable to usurpation and abuse, have been transferred to the general government, which now holds the purse strings of the nation. Should combinations ever be formed hostile to our free institutions, that is the quarter from which you may expect them; for there is centered the moral and physical power of the country.

It should be remembered that we are acting, not for ourselves and this generation only, but for posterity. The day may come, when the state will be convulsed with civil commotions—when we may have riots and bloodshed; and wise men are bound to provide against future evils and calamities, by creating such depositories of power as shall at all times be competent to afford protection to all, by preserving the supremacy of the laws. Our blessings under the protection of Providence are owing to the mediocrity of our condition. It had been said, and it was not improbable, that this was the last Convention that would ever be assembled in the state; and if you now give out of the hands of the landed interests their rights, they can never be recalled.

The city of New-York now contains a population of 123,000, and it already has 12 or 14,000 voters. It is rapidly increasing; and with the addition of new voters, will elect whoever they please for governor, possess a controling influence in the assembly, and in fact rule the state. Shall we be called on to surrender the senate also, and thus strip the agricultural interest of every vestige of power?

What would be the character of the future population of the metropolis, and of other large cities which would spring up in various parts of the state? It would in all human probability comprise a few men of inordinate wealth, and a multitude degraded by vice and oppressed with poverty. These were the proper materials for the most dangerous species of aristocracy. The monied interest would be in the hands of the profligate and ambitious, who would make use of their wealth to bribe and purchase the votes of the venal classes of society. The time is not distant, when those that have nothing, will form a majority in cities and large villages, and constitute a large portion of the population, even in the country. Emigrants of all descriptions, and from every quarter of the globe, were constantly pouring in, to swell the tide of population, and in many cases to increase the mass of vice, ignorance, and poverty. Extensive factories were daily springing up, and would hereafter be filled with crowds of dependants, whose votes would be at the disposal of the wealthy owners. These establishments, if all who were employed in them were permitted to vote, would possess an overwhelming and dangerous influence.

Was it unreasonable, then, to ask protection for the paramount interest of the state—the farming interest? Would it not be safe, would it not be wise and salutary, to provide some check upon the influence of excessive wealth and profligate penury? And how could such a check be more discreetly provided, or lodged in safer hands, than by investing those with peculiar privileges, who, by honest industry, and rigid economy, had, with the smiles of Providence, acquired property? This description of our population were commonly persons of sober, temperate, and frugal habits, little disposed to abuse power or forget right. But what was the character of the poor? Generally speaking, vice and poverty go hand in hand. Penury and want almost invariably follow in the train of idleness, prodigality, intemperance, and sensuality. Was it not wise to discountenance these vices, by encouraging their opposite virtues?

It had been said that the amendment would give an undue influence to the landholders. But it is well known that the large landholders in this state, are even now few in number. In a few years they are gone. The law of descents is rapidly breaking up their estates; and it surely would not be said, that our institutions were in danger from the influence of the small farmers in the country. The great object of government was to protect what was lawfully acquired. Where property is insecure, you find despotism. Freedom flourishes where property is safe.

We had already given the executive a veto upon all laws. Some gentlemen apprehended evils might arise from this—that the governor would become the mere creature of the legislature, dependant on their will, and subservient to their wishes. If the senate was preserved, as this amendment proposed, the danger which had been feared would be avoided. The senate would form a stable and independent body, and would check any encroachments upon the rights and liberties of the people, either from the other branch of the legislature, or the executive.

An argument, of as much weight perhaps as any that had been urged, was drawn from other states, in none of which, it had been said, was there a distinction of the kind, which the amendment proposes. He begged the indulgence of the committee for a moment, while he adverted to the state of Massachusetts. An attempt had been made by the county of Suffolk, embracing the capital of the state, and a powerful monied interest, to obtain an ascendancy and control over the legislature, by proposing a representation in proportion to real and personal property. But the yeomanry of Massachusetts instantly took the alarm. It was foreseen that the country would be politically enslaved by the enormous wealth and influence of the capital, and the farmers of the state, true to their interest, interfered and defeated the project.

But he could not forbear to remark, that in all our proceedings, too much importance appeared to be attached to the examples of other states.

It should be recollected that the state of New-York, in moral and physical power, was not inferior to any other in the union. It was, therefore, entitled to take the lead, instead of being taught by every petty state beyond the Allegany mountains. Those states were of recent origin, and without experience; and there was little or no analogy between our condition, and that of any of those to whom reference had been made. They have no states like ours. They have no metropolis like New-York, whose commerce extends to every sea, and whose wealth is drawn from every state. An emporium into which is to flow, on the surface of the grand canal, the produce of a vast and fertile interior, bordering on the western lakes, whose shores are more extensive than the Mediterranean or Baltic. Albany, too, will probably become a great city; and is doubtless destined, with Buffalo and Rochester, to rival in extent and wealth the cities of Liverpool, Bristol, and Manchester. And what will be the condition of their population? By an irreversible decree of Providence, it is pronounced, "the poor ye have always with you"—people who have no interest in your institutions—no fixedness of habitation—no property to defend. And is it not in human nature to envy superiority, in whatever it may consist; and to wish to dispossess, and obtain that which is envied? Is there not danger, then, in departing too far from that system which our ancestors ordained?

Our state is now going on with the patience of the ox, the wisdom and sagacity of the elephant, and the strength of the lion, in the path of prosperity. And yet, in this hallowed land, from the uneasiness that is exhibited, and the complaints that are made, one would suppose that we were writhing under an Algerine despotism. But whatever way the current may set, let us "do justly and fear not." Popularity is a shadow that shifts with the luminary which casts it; nor can its bearing to-day, indicate its position to-morrow. The President of the Convention has told us, with becoming exultation, that twenty years ago, he resisted, alone and separate from his party, a measure introduced to reduce the power of the executive. The time might come, when the gentleman from Dutchess, (Mr. Livingston) might witness in this state a prospect similar to the one he had taken from the battlements of the palace in the neighbourhood of Paris, a confiscation by the abandoned poor, of the honestly and hard-

earned estates of the rich. He hoped equal firmness and equal independence would be manifested by every one on this occasion.

The time will come, when the yeomanry, those who own the substance of the country, will regret, should the amendment be defeated, that they gave up a right which they cannot recal, and surrendered a privilege which they cannot regain.

Col. Young. It has been observed by the honourable gentleman of Columbia, (Mr. Van Ness) that it devolves upon the opposers of the amendment to point out its inutility. I am saved that trouble by the gentlemen themselves. They inform us that there are forty or fifty thousand people in this state, deprived of the right of suffrage, who ought to exercise it.

Another honourable gentleman, (Mr. Van Vechten) has deplored the omission of the word *freehold* in the report of the committee; whilst the member from Columbia, (Mr. E. Williams) pointed out with great force and perspicuity, the inconvenience and uncertainty that had arisen from its insertion into our existing constitution. He would leave those gentlemen to reconcile such contradictions as they could. The report of the committee, however, and the amendment of the gentleman from Delaware, were calculated to do away at once all this moral turpitude; to prevent these frauds and perjuries by simplifying the system; and extending the right of suffrage to all, whose station in society, and whose presumable intelligence, integrity, and independence, gave them a right to expect it.

The constitution of the United States was made subsequently to ours, and contained no provision, that either the electors, or elected, should be freeholders. And yet it gave to the general government the power of making war and peace, and of creating a national debt that had the effect of a mortgage on all the freehold estate in the union. Why, then, preserve this odious distinction in the state of New-York?

It has been said that the poor will increase with the progress of society, and therefore you ought to limit this privilege to the freeholders. Whom do the gentlemen mean by the epithet *poor?* The paupers? They are excluded by every proposition that has been made. Or do they intend to describe that intermediate class of society, between the *very* poor and the *very* rich? If they mean the latter, I am prepared te say, and that, too, with emphasis, that *they ought not to be excluded.* They are the soundest, the most honest, and incorruptible part of your population.

Mr. Young continued his remarks for some time; but the usual hour of adjournment having nearly arrived, and the patience of the committee probably exhausted, he would apologize for an abrupt conclusion of his remarks, and submit the question.

The question on the amendment offered by Chief Justice Spencer, was then taken by ayes and noes, and it was decided in the negative, as follows:

NOES—Messrs. Baker, Barlow, Beckwith, Birdseye, Bowman, Breese, Briggs, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunting, Hurd, King, Knowles, Lansing, Lawrence, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Munro, Nelson, Park, Paulding, Pike, Pitcher, Porter, President, Price, Pumpelly, Radcliff, Reeve, Richards. Rockwell, Rogers, Root, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seaman, Seely, Sharpe, Sheldon, R. Smith, Starkweather, Steele, D. Southerland, I. Sutherland, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Verbryck, Ward, A. Webster, E. Webster, Wendover, Wheaton, Wheeler, Woodward, Wooster, Yates, Young—100.

AYES—Messrs. Bacon, Fish, Hees, Hunter, Huntington, Jay, Jones, Platt, Rhinelander. Rose, Sanders, J. Smith, Spencer, Sylvester, Van Horne, Van Ness, Van Vechten, E. Williams, Woods—19.

The committee then rose, reported progress, and obtained leave to sit again. Adjourned.

WEDNESDAY, SEPTEMBER 26, 1821.

Prayer by the Rev. Mr. Davis. The President then took the chair, at 9 o'clock, A. M. when the journal of yesterday was read and approved.

THE ELECTIVE FRANCHISE.

On motion of Mr. N. Sanford, the Convention resolved itself into a committee of the whole on the unfinished business of yesterday.—Mr. N. Williams in the chair.

Mr. Briggs said it had been proposed to divide the amendment into two distinct parts, and he wished that it might now be done.

Mr. Duer observed, that it had been yesterday decided, in effect, that the qualifications of electors should be the same for whatever public officer was the subject of their choice. He had fully concurred in that measure.

He had concurred in the rejection, because he was satisfied that it tended to introduce, or rather to perpetuate, a distinction that was unnecessary and odious. That its effect and operation would be to divide the people into hostile factions, without attaining the end for which it was designed. He could discover no principle that would justify a denial in the choice of senators, that would not also justify a total denial of the right of suffrage.

He had also concurred in the rejection, because it was required by the people at our hands. It was a principal purpose for which the Convention was called, and to refuse to obey their will, would be a violation of that confidence which had been impliedly reposed. He admitted that there was not legitimate, legal proof of their wishes, but it was sufficiently satisfactory to the conscience and understanding.

But whilst he expressed his satisfaction that the last vestiges of an odious distinction were erased from the constitution, conformably to the wishes of the people, he hoped that the Convention would not pass those bounds of moderation which those wishes prescribed.

There were peculiar reasons why the committee should proceed with caution. Whatever might be done in relation to the subject, would be sure to be opposed. Freeholders are jealous of their privileges—and every means would be resorted to, to excite that jealousy and extend the alarm. It might be safely predicted that the cry of jacobinism would be heard in every county—that the valuable and venerable institutions of the state were about to be destroyed—that the barriers against the eruption of democratic phrenzy were prostrated; and that all the horrors of revolutionary France were about to be introduced into our country. He hoped and believed that these predictions and representations would not deter the members of this body from the firm discharge of their duty—but it taught the necessity of caution.

Mr. D. was not one of those who believed that every person has an absolute right to elect his rulers; still less, that they derive such right from social compact or grant. The object of all government was the security and happiness of the governed. No right could exist inconsistent with that object. It was a question of expediency only, and not at all dependent on abstract principle.

Mr. D. was heretic enough to believe that there was no peculiar abstract excellence in a republican form of government. Its excellence depended on its adaptation to the habits and manners of the people. Where the people were sunk in vice and profligacy, it was perhaps the worst government that could be instituted. But where the body of the people were intelligent and moral—where there existed habits of attachment to liberty and subordination to law, a republican government, was, of all others, the most excellent.

It was not to be denied, that there were some among ourselves, who did not possess the discretion or independence necessary for the due and proper exercise of the invaluable privilege of the right of suffrage. There was no necessary connexion between poverty and vice. Yet as a general rule—in a country like ours, where the acquisition of property is within the reach of all, where the labourer to-day may be a freeholder to-morrow, it was but too generally the fact, that those who remained in poverty, were continued in it by idleness

or vice. And it was a melancholy reflection, that by an inscrutable law of nature, this class were sure to increase with the advance of population.

Can it then be questioned, if the principle and the fact be admitted, that it is our duty to prohibit, or limit the exercise of a right that is sure to be abused? The sober minded people of this state are not prepared for the new and untried principle of universal suffrage; and the introduction of this principle would necessarily result from an adoption, either of the report of the committee, or of the amendment of the gentleman from Delaware.

If we are prepared to throw down those guards which the wisdom of our ancestors erected, let us not do it covertly, but directly. Let us not conceal from ourselves, or others, the inevitable effect of our regulations.

Mr. D. then entered upon a detailed discussion of the result of the propositions before the committee, to show that by extending the right of suffrage to all who performed military service, and laboured on the highway, unrestricted and universal suffrage would clearly and certainly follow. After animadverting upon a remark made on Monday by a gentleman from Columbia (Mr. Williams) in illusion to himself, Mr. Duer submitted to the committee an amendment which had for its object to exclude all persons from the right of suffrage, except such as pay taxes on real or personal estate.

A discussion took place between Messrs. Root, Duer, Spencer, and the Chairman, on a question of order; and whether Mr. Duer's substitute could be received.

Mr. Duer considered his proposition as an amendment to the report of the select committee.

After a few remarks from Mr. Wendover the chairman decided that an amendment to Mr. Root's proposition was in order, but that a substitute was not.

Mr. Ward moved that the committee rise and report, for the purpose of revising and settling the rules of the house.

After a few remarks from Messrs. Sheldon and Sharpe, the motion was put and lost.

Mr. Duer then moved to reject the amendment of the gentlemen from Delaware.

Gen. Root said, that the question would be on his amendment—call it rejection or what you would, it amounted to the same thing. He never before heard of a motion for rejecting an amendment; but as the gentleman from Orange had never held a seat in the legislature, his ignorance of parliamentary rules was excusable. That gentleman was also excusable for being no better acquainted with republicanism.

It had been said that his (Mr. R.'s) amendment would not suit the sober-minded part of the community; he suspected it was more obnoxious to the *high-minded* than to the *sober-minded*. In his opinion, military services and working on the public roads should entitle persons to the elective franchise—(he begged pardon, he would call it by that name no more, out of respect to his honourable friend from New-York, (Mr. Fairlie)—should entitle persons to the right of suffrage. He would remind the committee, that the question would be on his amendment—not on *rejecting* it.

Mr. Brinkerhoff moved an amendment by striking out "*two*" and inserting "*five*."—His reasons for the motion were, that many young men reside, with their fathers after they are twenty-one years, for some time.

Mr. Briggs said it struck him, that the gentleman might improve his motion by adding a proviso, "so long as they reside with their fathers."

Mr. Hogeboom thought the amendment unnecessary, as another qualification, that of working on the highway, would supersede such a provision.

Gen. Root explained the reasons which induced him to adopt the term "*between the age of twenty-one and twenty-two.*"

Mr. Wendover opposed the provision for admitting the sons of farmers to vote, since the principle would operate unequally, as in the case of orphans.

Mr. Brinkerhoff's motion was then put, and lost.

Mr. Wendover then moved to strike out the words, "and the sons of such citizens being between the age of twenty-one and twenty-two years."

Chief Justice Spencer made a few remarks in support of the motion, and thought the provision unnecessary.

Gen. Root made a brief reply, when the motion was put and carried.

Gen. Tallmadge called up the sub-divisions of Mr. Root's amendment which he had moved when in a committee of the whole on this subject some days since.

Gen Root was opposed to acting on the amendment in the manner proposed by the gentleman from Dutchess. A case might occur, where he (Mr. R.) should find it necessary to vote against a part of his own amendment.

Another discussion on a question of order took place between Messrs. Tallmadge, Root, Van Buren, Spencer, Sharpe, and the Chairman.

Mr. Sharpe said we had now arrived at a state of things which he had anticipated, when this amendment or substitute was received in its present shape.

Mr. Jay, for the sake of relieving the embarrassments of the committee, moved to strike out the words, " or, being armed and equipped according to law, shall have performed within the year military duty in the militia of this state."

Mr. Duer moved to strike out a still larger portion of the amendment, including the above words and another clause ; and hoped the gentleman from Westchester would withdraw his motion with that view.—Mr. Jay did not assent.

Mr. E. Williams said it had been previously moved to divide the amendment. That motion appeared to him to be in order, and he wished it might first be taken.

Here another discussion on the question of order was had, in which Mr. President, and Messrs. Tallmadge, Root, and Spencer took part, when the motion for dividing the proposition was put and lost.

Mr. Sheldon then seconded the motion of Mr. Jay to strike out, as above stated.

Mr. Van Buren called for the ayes and noes.

Mr. King regretted the embarrassments in which the committee were involved. He wished the proceedings had taken a different course, and that the report of the committee had been amended in the ordinary way.

In relation to the merits of the motion of the gentleman from Westchester, (Mr. Jay,) he would make a few observations. If the object of the committee was to make this constitutional provision a means of carrying into effect the military laws, and to make a forfeiture of the right of suffrage the consequence of a failure to comply with that law in every particular, it would be proper to adopt the amendment of the gentleman from Delaware.

The proposition was now to expunge that part of the amendment which makes the performance of military service a sufficient qualification for an elector.

Mr. K. had concurred yesterday in rejecting the distinction contemplated by the amendment of the gentleman from Albany. That distinction ought to be abolished : public sentiment required it. It would not rest satisfied until it was abolished ; and it was the part of wise and prudent men well to consider the progress and state of public opinion, and to settle it down upon the best possible basis. Want of union and mutual jealousies were to be avoided. Will not the senate, he asked, be stronger, having the confidence and contribution of the votes of all ? And would it be consented to, that the landholders should appoint the senate, and those who held no land, the assembly ? The senate should receive the support and influence of all the classes in the community ; and those who could not be trusted for the choice of one branch, should not be trusted for any, but should be excluded from all. There must be a general rule--an uniform principle. One may think that those who fight should enjoy that privilege ;--another, that all who make contributions in any possible form to the support of the government whether in the shape of highway labour, or otherwise, should be admitted to vote. But there should be a common rule agreed upon, by which to include and by which to exclude.

In Mr. K's opinion, every man should be excluded who has not the *capacity* to give an impartial and independent suffrage, or who was habitually and necessarily influenced by other men.

The great and difficult question is how to apply this rule. Mr. K. then proceeded at considerable length to shew that those who merely performed military service and labour on the roads, did not ordinarily compose that class of electors that could be deemed independent; and that although we were bound to extend to them all the charities of our nature, and although it could be no object or desire of any member of the Convention, to depress any class of our fellow citizens, yet it well deserved reflection whether they were not so commonly dependant on others, as to render it unsafe to extend to them a privilege so precious to us, and which, if abused, would be dangerous to the very existence of our liberties.

Mr. Burroughs supported the amendment of Mr. Root, and thought it preferable to the original section in the report.

Mr. Dodge was in favour of retaining the clause in the amendment, as it now stood.—With great deference to the gentleman from Queens, he acknowledged himself unable to see the propriety of the rule, which had been proposed. He asked if it did not require as much *capacity* to do military duty, as to pay a tax?

Mr. King explained—he did not mean to lay down an absolute rule, but merely to suggest some general principle.

Mr. P. R. Livingston recapitulated the principles which governed the committee, of which he was a member, in making this report. He spoke against the rule, which had been proposed by the gentleman from Queens; and remarked, that if the principle would apply in any case, it would be in that of the blacks, in favour of whom that gentleman had voted.

Mr. King said that gentlemen were imputing to him sentiments which he had not expressed.

Col. Young believed this committee, of which he was a member, had bestowed as much labour on their report as any other committee, and after mature deliberation, they had come to a conclusion, that all who sustain public burdens, either by money, or personal services, should be entitled to vote.

Mr. Y. admitted that no one should be allowed to vote, who did not possess *capacity* and *independence.* But what moral scale could be established, graduated by dollars and cents? There may be bad men among those who perform militia duty, and among those who labour on the highway; but so there may be among those who pay taxes. The air we breathe may be contaminated; but shall we refuse to inhale it, lest perchance we might breathe the pestilence?

Mr. Y. contended that those who performed militia service, really paid a heavier tax than many freeholders of $2000. Here young men were usually the framers of their own fortunes. They were not depressed, as in foreign countries, by a decree of irreversible humiliation. Here were no orders, ranks, or titles, but those of virtue and intellect. In India it was impossible that an individual of an inferior, degraded *cast*, should ever rise to a participation with those of a superior. In Europe, too, the prospects of the poor were hopeless. They cannot emerge from their situation, but were doomed to irremediable poverty.

> Fair Science to their minds her ample page,
> Rich with the spoils of time, can ne'er unroll;
> *Chill penury* repress'd their noble rage,
> And froze the genial current of the soul.

This melancholy reflection cannot apply in this country without the aid of imagination; but in Europe, although it was poetry, it was no fiction.

The question on Mr. Jay's amendment was then taken by ayes and noes, and decided in the negative as follows:

NOES—Messrs. Barlow, Beckwith, Bowman, Briggs, Brinkerhoff, Brooks, Buel, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dodge, Dyckman, Fenton, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Hurd, Knowles, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Munro, Nelson, Park, Pike, Pitcher, Porter, President, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, Sage, Sanders, N. San-

ford, R. Sandford, Schenck, Seaman, Seeley, Sharpe, Sheldon, I. Smith, R. Smith, Starkweather, Steele, D. Southerland, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Ness, S. Van Rensselaer, Verbryck, Ward, A. Webster, E. Webster, Wendover, Wheeler, E. Williams, Wooster, Young—92.

AYES—Messrs. Bacon, Birdseye, Duer, Edwards, Fairlie, Jay, Jones, Kent, King, Lansing, Lawrence, Paulding, Platt, Rhinelander, Rogers, Rose, Spencer, I. Sutherland, Sylvester, Van Horne, J. R. Van Rensselaer, Van Vechten, Wheaton, Woods, Woodward, Yates—26.

Gen. Tallmadge moved to strike out, " or on the high-ways."

Col. Young spoke in favour of this clause, against striking out.

Mr. President wished the phraseology might be amended.

Gen. Root. That is not important at present—after the question is taken on the merits of the clause, we can then amend the phraseology if necessary. He spoke sometime in favour of the clause.

Gen. Tallmadge was in favour of striking out, and of confining the qualification of voters to such as do military duty and pay taxes.

Col. Young replied, and was opposed to striking out.

Mr. Van Buren supported the motion for striking out. The people were not prepared for universal suffrage.

Gen. Root replied, that if the clause was stricken out, it would disfranchise a numerous class of persons who ought to vote.

Mr. Jay wished, before the motion was put, to assign the reasons which would induce him to vote against striking out, that his conduct might not seem inconsistent with his vote on the last question. He thought the persons included in this clause as much entitled to vote, as those who do military duty, and a discrimination would therefore be unjust.

Mr. King begged leave to make a single remark. The qualifications as here fixed appeared to him vague and indefinite—we were leaving too much to the legislature.

Mr. E. Williams then went into a full explanation of the provisions of the present constitution regulating votes for the assembly, and shewed that a large class of voters would be disfranchised if this clause were stricken out. It would affect a large portion of his constituents, and he should give his vote for retaining it.

Mr. Van Buren intimated that the gentleman from Columbia was not, perhaps, so much interested in the amendment as himself; since that gentleman, (Mr. Williams) had expressed a belief a few days ago, that we had already made the constitution worse, and he probably would not regret to see us go so far as to have all the amendments rejected by the people.

Col. Young remarked that the very men whom we now propose to disfranchise voted for the members of the Convention ; and would they vote for a constitution, which excluded them from the right of suffrage ?

Mr. Birdseye thought the inference incorrect. It did not follow, that these persons would be excluded, if the clause was stricken out. He intended to offer an amendment in another shape, which would include them.

Mr. Nelson spoke against the clause. If it passed, all the preceding qualifications were unnecessary, as this was so wide as to embrace all—it granted universal suffrage.

Mr. Burroughs again took the floor, and replied to the gentleman from Columbia, (Mr. Williams.)

Mr. E. Williams disclaimed the motives which had been imputed to him; and believed he was as much interested in the amendments, and in having a constitution submitted which the people would approve, as the gentleman who had thrown out unfounded insinuations. It did not follow because he was in the minority yesterday, that therefore he wished to defeat the amendments. The gentleman from Otsego had been in the minority once or twice; but no one impeached his motives for his conduct since. He presumed when he found leisure to examine this question more minutely, he would agree with him.

Mr. Russell was against striking out. It would disfranchise many who ought to vote. He recollected a revolutionary soldier in his town, who was at the

siege of Quebec, and another who was at the storming of Stoney Point, and neither would have a vote, if this motion prevailed.

The committee then rose, reported progress, and obtained leave to sit again, and the Convention adjourned.

THURSDAY, SEPTEMBER 27, 1821.

Prayer by the Rev. Mr. De Witt. The President then, at the usual hour, took the chair, and the minutes of yesterday were read and approved.

THE ELECTIVE FRANCHISE.

Mr. N. Sanford moved that the Convention now resolve itself into a committee of the whole on the unfinished business of yesterday, (Mr. Root's amendment.)

Mr. Yates hoped, before the Convention went into committee, the rules of order would be settled, so as to prevent the recurrence of those embarrassments that had been yesterday experienced.

After some discussion between the President, Mr. Spencer, and Mr. Yates, the question of order was postponed for the present, and the motion of Mr. Sanford prevailed.

Mr. N. Williams in the chair.

Gen. Tallmadge withdrew his motion of yesterday to strike out the words "on the highways," and offered the following substitute:—"Or shall for six months next and immediately preceding the election, have rented a tenement therein of the yearly value of five dollars, and shall have been rated and paid a highway tax, either by labour or commutation."

Mr. Tompkins inquired whether it was in order to receive the amendment of the gentleman from Dutchess?

The Chairman decided it was in order, as the gentleman from Dutchess had withdrawn his other motion.

Mr. Wheeler gave notice that he should at a proper time offer the following amendment to the proposition of the gentleman from Delaware. After the word "*county*" in Mr. Root's amendment, to substitute the following, in lieu of the residue of said amendment, to wit:

"And also every other male citizen, of the age of twenty-one years, who shall have been three years an inhabitant of this state, and for one year a resident in the town or city where he may offer his vote (paupers and persons under guardianship excepted.) *Provided*, That persons in the military, naval or marine service of the United States shall not be considered as having obtained such residence, by being stationed in any garrison, barrack, or military place in this state."

Mr. Tompkins thought that all the amendments that had been offered were in some measure objectionable, since the qualifications were not defined by the constitution, and too much was left to the legislature.

He then presented his views of the subject, which were that the right of suffrage should be extended, as proposed by the gentleman from Washington (Mr. Wheeler;) that the governor should be a freeholder, elected for two years; and that the senators should be freeholders. He therefore moved that the committee rise and report, with a view that the subject be referred back to a select committee.

Col. Young thought it would be better to settle the principles in committee of the whole, and hoped the gentleman from Richmond (Mr. Tompkins) would consent to withdraw his motion, that he might move to pass over the amendment of the gentleman from Delaware.

Mr. Tompkins assented, and Col. Young moved to that effect.

Gen. Root was opposed to the motion of the gentleman from Saratoga (Mr. Young,) and commenced some remarks against it, when

Col. Young withdrew his motion.

The question then returned on Gen. Tallmadge's motion.

Gen. Tallmadge explained at some length his views in making the motion he had yesterday submitted, and the reasons which had induced him to withdraw it, and offer the amendment which he had just presented to the committee. He took occasion to say that he was opposed to universal suffrage.

Col. Young opposed the amendment on the ground that it was rendering the regulation too complex, and was opening a door for swearing in votes. He preferred the amendment of the gentleman from Washington (Mr. Wheeler,) as being more simple.

Gen. Root said the amendment of the gentleman from Dutchess was providing for the disfranchisement of a numerous class of citizens. The renting of tenements had become odious to the people, and led to many frauds. He enlarged upon the remarks of the gentleman from Niagara (Mr. Russell,) who mentioned two instances in his town, where two revolutionary patriots and soldiers, one of whom fought with Montgomery under the walls of Quebec, and the other under Wayne at Stoney Point, would be disfranchised, if this provision were stricken out. But the honourable gentleman from Otsego (Mr. Van Buren) thinks that if this clause is retained, the amendments will be jeopardized, and probably be rejected by the people. That honourable gentleman must doubtless be better acquainted with his constituents than himself, (Mr. Root.) This might be the case so far as it regarded Cooperstown, which the gentleman represented; but as Delaware was contiguous to Otsego, and as a part of the latter county was nearer to Delhi than to Cooperstown, he must claim to be as well acquainted with the sentiments of the people in that quarter as their representative.

Mr. Van Buren felt himself called on to make a few remarks in reply to the gentleman from Delaware. He observed that it was evident, and indeed some gentlemen did not seem disposed to disguise it, that the amendment proposed by the honourable gentleman from Delaware, contemplated nothing short of universal suffrage. Mr. V. B. did not believe that there were twenty members of that committee, who, were the bare naked question of universal suffrage put to them, would vote in its favour; and he was very sure that its adoption was not expected, and would not meet the views of their constituents.

Mr. V. B. then replied to a statement made yesterday by his honourable and venerable friend from Erie, (Mr. Russell,) in relation to the exclusion of soldiers who had fought at Quebec and Stoney Point, under the banners of Montgomery and Wayne. And he felt the necessity of doing this, because such cases, urged by such gentlemen as his honourable friend, were calculated to make a deep and lasting impression. But although a regard for them did honour to that gentleman, yet it was the duty of the Convention to guard against the admission of those impressions which sympathy in individual cases may excite. It was always dangerous to legislate upon the impulse of individual cases, where the law about to be enacted is to have a general operation. With reference to the case of our soldiers, the people of this state and country had certainly redeemed themselves from the imputation that republics are ungrateful. With an honourable liberality, they had bestowed the military lands upon them; and to gladden the evening of their days, had provided them with pensions. Few of those patriots were now living, and of that few, the number was yearly diminishing. In fifteen years, the grave will have covered all those who now survived. Was it not then unwise to hazard a wholesome restrictive provision, lest in its operation it might affect these few individuals for a very short time? He would add no more. His duty would not permit him to say less.

One word on the main question before the committee. We had already reached the verge of universal suffrage. There was but one step beyond. And are gentlemen prepared to take that step? We were cheapening this invaluable right. He was disposed to go as far as any man in the extension of rational liberty; but he could not consent to undervalue this precious privilege, so far as to confer it with an undiscriminating hand upon every one, black or white, who would be kind enough to condescend to accept it.

Mr. Fairlie proposed the following amendment, to provide for such cases, as had been mentioned by the gentlemen from Niagara and Delaware; "And

all persons who served in the army or navy of the United States in the revolutionary war."

Judge Van Ness thought favourably of the amendment offered by the gentleman from Washington. He had believed that property ought to be made a qualification for voting; but as that question had been decided, he was bound to acquiesce in the decision, and should not revive the discussion. The best substitute for this principle, in his opinion, was a long residence in the state, and he was pleased with the proposition, making the term of residence three years. This regulation would exclude many persons who constituted a floating population, and who ought not to vote. He examined the amendment of the gentleman from Delaware in detail, and pointed out its defects. The qualification derived from being equipped and armed to do military duty, was the highest which had been introduced. The amendment of the gentleman from Washington would include all the classes, to whom the gentleman from Delaware proposed to extend the right of suffrage, and would therefore supersede the necessity of his amendment. The amendments adopted by this Convention would be sanctioned by the people; and it therefore became us to act with more caution and circumspection. He apprehended if we each would yield a little, we might act with unanimity.

Judge Platt thought it was very important, that the qualifications of voters should be fixed with precision by the constitution, and that nothing should be left to the legislature. That department of the government was fluctuating, and liable to high party excitement; and it would be unwise and dangerous to entrust it with the power of regulating the right of suffrage, any farther than was indispensably necessary. He disagreed with the gentleman from Columbia, (Judge Van Ness) that *residence* should be made almost the sole qualification for voting. Persons might have resided long in the state, who were wholly unqualified to exercise the elective franchise.

Mr. P. alluded to the remarks of the gentleman from Dutchess, (Mr. Livingston) who in an air of ridicule spoke of the large cities which were hereafter to spring up in this state. That gentleman had once been mistaken in regard to the western parts of the state, and he believed his views would now prove equally erroneous. He believed the picture of the future growth of the state, as pourtrayed by the gentleman from Columbia (Judge Van Ness) a few days since, was not overdrawn, and that all his predictions of the greatness of the state would be verified. In view of this state of things, he was opposed to universal suffrage, as it might endanger the future liberties and welfare of the state. The elective privilege was neither a right nor a franchise, but was, more properly speaking, an office. A citizen had no more right to claim the privilege of voting, than of being elected. The office of voting must be considered in the light of a public trust; and the electors were public functionaries, who had certain duties to perform for the benefit of the whole community. His plan was, that no person should be vested with the elective privilege, except such as paid taxes on real or personal estate; and that too much might not be left to the legislature, the constitution should limit the amount of the tax, say at one dollar.

Mr. Wheeler spoke for some time in favour of the amendment offered by him, and against the amendment of the gentleman from Delaware. The principal objection to Mr. Root's plan appeared to him to be, that the qualification of voters were left too vague, and the discriminations were in some cases arbitrary. Gentlemen had been lavish of their encomiums on the militia. We had been conducted to the plains of Marathon, and the mountains of Switzerland, to illustrate the bravery of our own troops. No one had a greater respect for the militia than himself; but of whom were they composed; Of the farmers and mechanics of the state, who would be provided for by other qualifications. His amendment would include all these classes, as well as many others who were equally entitled to vote.

Gen. J. R. Van Rensselaer said, that all the plans which had been submitted to the Convention, appeared to him objectionable. The proposition of the gentleman from Washington would terminate in universal suffrage. It admitted persons of all descriptions to vote. He concluded by reading the following substitute, which he intended at a proper time to offer.

"Other than paupers or persons who have been, or may hereafter be, convicted of an infamous crime, who shall hold, possess, or be seized in his own right or in right of his wife, of an interest in lands, tenements, or hereditaments of the value of two hundred and fifty dollars, over and above all debts charged thereon; or who shall have been for three years an inhabitant of this state, and for one year next and immediately preceding the election, have been a resident in the city, ward or town in which he may offer his vote, and shall have actually been taxed, and paid in money on a state or county tax, within one year next preceding the election, at least the sum of shall be entitled to vote in the city, ward or town in which he may then actually reside, for governor, lieutenant-governor, senators, and members of assembly. And that all such electors, together with all other citizens of this state, who shall have been rated, and paid taxes to any amount, or shall be enrolled and have actually performed military duty, or who shall have been assessed to work on any public highway, and shall have worked thereon, or have paid a commutation therefor, shall be entitled to vote at elections for all other elective officers."

Mr. J. Sutherland. I have taken no part in the discussion of the different questions, in relation to the right of suffrage, not, because I have not felt the importance of the subject, but because I was sensible that most of the considerations which would influence its decision, would be more forcibly urged by others. I have felt the great importance of the subject. It lies at the very foundation of every representative government; and the decision which we shall finally pronounce upon it, must most essentially affect the future character of all our institutions. I could not enter into the feelings of those gentlemen, who thought that in parting with the freehold qualification for senatorial electors, we gave up our only guarantee for the unmolested enjoyment of life, liberty, and property—that we were committing the sacred institutions of our forefathers, under which we have lived and prospered for more than forty years, to the winds and to the waves of a turbulent and unbalanced democracy. If I could have thought so, I should have united my feeble efforts to theirs in endeavouring to preserve that feature of our constitution. But without entering into the argument of that question, I did believe with the honourable gentleman from Queens, that public opinion called for the abolition of the freehold qualification. By public opinion, I do not mean popular clamour, which in truth is often produced by a very few individuals: I mean the calm and deliberate judgment of the people, pronounced upon a subject on which they are competent to think and to decide, after it has been fairly proposed, and temperately and fully discussed. To public opinion thus understood, I would yield every thing: To popular clamour nothing. I will not detain the committee by attempting to show that the question to which I have alluded, is one on which the people are capable of thinking or deciding; nor with an enumeration of the circumstances, which have induced me to believe, that a large majority of those who are interested in the question, wish the freehold qualification abolished. I will only advert to the fact of the great unanimity with which that question was decided by the Convention, which contains perhaps as fair and respectable a representation of the freehold interest of the state as could be assembled.

He thought gentlemen did not realize, how far they have already extended the right of suffrage. We have given to that large and respectable portion of our fellow citizens, who under our present constitution, can vote only for members of assembly, the privilege of voting for governor and senators also; they have now an equal participation with the freeholders of the state in the choice of all the officers of government. He believed, that the people of this state would be satisfied with this extension—that they did not wish nor expect that portion of our population, to whom it has heretofore been thought unsafe or unwise to entrust the right of suffrage, even for a single branch of the government, to be admitted to the great and responsible privilege of choosing all its departments: It was making a violent, and, he believed, an unexpected stride —It was vibrating from one extreme to the other. It is not to be denied—it is a fact, which all observation and all history teaches, that there is and must be, in every great community, a class of citizens, who, destitute alike of property, of character, and of intelligence, neither contribute to the support of its insti-

tutions, nor can be safely trusted with the choice of its rulers; and that this class increases in a geometrical ratio, with the increase of its wealth and its population. That, that description of persons ought not to enjoy the right of suffrage, all must admit; and the only difficulty seems to be, in fixing upon a rule which will exclude them, without at the same time excluding a different and better class of citizens. There is no general rule which is not subject to particular exceptions; and I am free to admit, that none can be fixed upon in relation to this subject, which will not exclude some who ought to be admitted, and admit others who ought to be excluded. But shall we therefore have no restrictions at all? Do we reason or act in this manner, in relation to the ordinary arrangements of government, or the ordinary transactions of private life? Is it ever admitted as a valid objection to a law, whose general operation is conceded to be salutary, that it may operate hardly upon a particular individual, or a class of individuals? If it were, there would be an end of legislation, as there must be of all arrangement, whether constitutional or otherwise, of a general and comprehensive character.

It is true, sir, that the right of suffrage may be safely extended, in proportion to the prevalence of good morals, and the general diffusion of education and intelligence through a community; and I am happy and proud to admit, that this concession lays a very broad foundation for the right of suffrage among us. But, sir, I am not without my apprehensions, that this very circumstance may lead us into error. Most of us are farmers: I feel myself honoured in belonging to that very respectable class of men—And when we look around us, and see how few there are in our respective neighbourhoods, to whom we should be unwilling to entrust the right of suffrage, we can hardly realize that there would be much danger in making it universal. But, sir, why is our population thus virtuous and intelligent, and how long is it to retain its present character? We have hitherto been almost exclusively an agricultural people: We have had an extensive and fertile region in the west, in which the enterprize of our citizens has found ample room to expand itself—Speculation has not pressed upon the means of subsistence—The capital of the country has been employed in the purchase and improvement of land, and the capital of our cities and towns in an advantageous peaceful commerce: Every thing has been in a state of rapid improvement—The pulse of the body politic has been healthful and vigorous. But, sir, we cannot anticipate the continuance of this state of things—We cannot expect an exemption from the changes and calamities which have visited other nations—Already an interest is growing up among us, which will produce a most important change in the habits and character of our population; I allude, sir, to the manufacturing interest, and I fully concur with the honourable gentleman from Oneida, in the opinion, that the western district of this state, will be, at no distant period, the work-shop, as it has heretofore been the granary, not of this state only, but of a very considerable portion of this union. Sir, there is no portion of the globe, of the same extent, which possesses superior manufacturing advantages; and I do not consider it visionary to anticipate, that within the lives of some who hear me, there will spring up upon the borders of your canal, cities and towns, which will bear no mean comparison with the largest and most flourishing manufacturing cities of Europe. Your metropolis, as has been justly observed, is destined to be the London of this western world. If this be so, sir, is it not wise to consider what will be the effect of the regulations which we are about to adopt, not in relation to the present state and condition of our society only, but in relation to that which is most assuredly to exist hereafter.

Sir, the immediate and direct consequence of political regulations, whether legislative or constitutional, are often utterly unimportant, in comparison with their distant and unforeseen effects. I trust, sir, that what we are now doing, is not done for a day; and in every stage of our proceedings, I have felt myself pressed, and in some degree awed, by the reflection, that the transactions of this assembly must shed a benignant or disastrous influence upon a remote posterity.

It is wise, therefore, to consider what will be the effect of universal suffrage upon a manufacturing population. (Mr. S. here went into the subject at some

length, and indeavoured to shew, that from the nature of their habits and occupations, a manufacturing population must be mose ignorant, and more subject to an arbitrary or corrupt influence, than any other description of people. That from the numbers that are collected and crowded together in large manufacturing cities and establishments, they were liable to sudden, violent, and dangerous excitements, under the influence of which, he contended the right of suffrage, would be dangerous and alarming.) I am aware, sir, that all classes of the lower orders of society, are more or less subject to influence. That they look with something of deference and respect to the opinions of those who employ them, who consequently minister to their comfort or subsistence —and that this influence is felt in the political, as well as other functions which they are called on to discharge. But, sir, this is very different from the influence which I have been deprecating. There is nothing in it either arbitrary or corrupt. Sir, corruption contaminates its instrument as well as its object. And who are to be the agents in buying, or otherwise unduly influencing the votes of this floating, ignorant, and mercenary class of voters? It will be the young and ardent politicians of the day, who, warmed, if you please, with an honest zeal in support of the cause which they espouse, will thus commence their political career, and contract habits and notions of political morality, which will accompany and influence them through life. This, sir, in my view, will be the first evil of universal suffrage. It is not the complexion which may be given by it to a particular election, or the ascendancy which it may give to a particular party; it is the introduction into your society, of a class of voters who cannot act intelligently and independently; who, therefore, will, on most occasions, sell their votes to the highest bidder. It is this portion, and this portion only, of the community, whom I would exclude; and the amendment of the gentleman from Dutchess, as far as it goes, I think will have this tendency. The renting of a tenement, supposes a man to have a family, to have arrived at years of discretion, and to have a residence of some permanency. If you pass this barrier, you go to universal suffrage; there is no stage between this and that. In the view of the subject which I have taken, is it wise to go that length?

But it is objected to this amendment, that the renting of a tenement is a term so vague as to leave too much to the discretion of the board of inspectors, which discretion may be abused. And an objection of a similar character has been made, to establishing the payment of taxes as a qualification for voters, because it is said it rests entirely in the discretion of the legislature to say who shall and who shall not pay taxes. They may say that no man shall be taxed, who is not worth 1000 dollars. The presumption of such an abuse of power, is an extremely violent one, and not lightly to be indulged. And if abused at all, it will undoubtedly be for the purpose of extending, not circumscribing the right of voting. Power must be vested somewhere, and wherever vested it may be abused. But whenever that shall be considered an objection to delegating power, as was forcibly observed by an honourable gentleman from Orange, in a former debate, all government is at an end, and society must be dissolved into its original elements. But, sir, those who make these objections are involved in this absurdity. They recommend to us to do that directly, which they admit to be a great evil—for fear that by an abuse of the power of the inspectors of our elections, it may be eventually done. After the very able discussion which this subject has undergone, I will trespass no longer upon the patience of the committee.

Mr. Edwards said that this was the very basis of our political fabric, and the due regulation of it was the most important question which had or would come before this Convention. He thought there was great danger of pushing this principle too far. He disclaimed any sentiments in favour of artificial distinctions in society; but he did believe, that there were many who were not qualified to exercise this right. In his view, taxation and representation should go hand in hand. He pointed out the evils which would follow, if the elective privilege should be carried to such an extent as had been contended for. If we sowed the wind, we must reap the whirlwind. We were unmooring the constitution of our fathers, and committing it to the waves. Much had been said

of the future. He believed the time would come, when posterity would look to those who now opposed universal suffrage as benefactors to the state. He hoped the committee would rise and report, that members might commune together for a few days.

Col. Young could not see the benefit of rising and communing together, till the principles on which we should proceed, were settled. In reply to the gentleman from New-York, (Mr. Edwards,) he would remark, that he appeared to advocate principles, which would disfranchise many persons, who were entitled to vote by the provisions of the present constitution. That gentleman was in favour of depriving those who work on the roads. The gentleman from Schoharie thought the legislature pure, and 30,000 young men corrupt. If you make the constitution acceptable to the people, you will anchor it in their affections.

Chief Justice Spencer said he had not troubled the committee since the vote on this proposition was taken. His conduct had not been, and he hoped it would not be, influenced by that decision. He should endeavour to discharge his duty faithfully and conscientiously, whatever might be the result. He examined at some length the amendment of Mr. Tallmadge ; and was in favour of striking out, although he did not like what was proposed to be inserted. Making the renting of a tenement a qualification for voting, was very objectionable ; it had led, and would lead, to many frauds and frequent perjuries. As for the clause which it was proposed to strike out, it evidently led to universal suffrage, and as such he should oppose it. It was an abuse of terms to call working on the highway a tax—it was a mere personal service required to be performed. This and similar propositions had induced him to offer his substitute, with the hope of preserving one branch of the government. By the decision of the Convention he had been convicted of an error ; and it was not his intention to controvert the wisdom of a large majority of this honourable body. His only wish, now, was, that the conflicting opinions of members might be reconciled, and the subject disposed of in a way that should do credit to this body, and consult the welfare of the state. We should recollect that the eyes of the world were upon us, and that this was another experiment whether a republican government in its purity could long exist—should we fail, the enemies of our form of government would mock at us. In his opinion we should adopt it as a general rule, that those should be vested with the elective privilege, who would be the most likely to exercise it with independence and discretion. It was upon this principle that he had voted against persons of colour. Gentlemen had quoted the maxim, that all men are born equal. This appeared to him mere sound. Would it be said that every person in the community had a right to vote ? He fully concurred with the honourable gentleman from Oneida (Mr. Platt,) who had said that the elective privilege was rather an office, or a function, than a franchise or a right. Much had been said of the east, and we had frequently been referred to that section of the country for lessons of wisdom. He held in his hand the amendments adopted by the Convention of Massachusetts—an assembly, embracing much talent, wisdom, and experience, from whose proceedings it was not derogatory to us to borrow precedents. [Mr. S. then read the section regulating the right of suffrage, as adopted by the Massachusetts convention.] Here was nothing of military duty, or of those who work on the highways. From the stress which was laid on military duty, one would suppose that we were to be involved in perpetual wars. There was nothing at present to justify such anticipations. The world was pacific and tranquil, and probably no member of this Convention would live to see this country involved in another conflict. As for the amendment of the gentleman from Washington, he thought favourably of some of its features, although he agreed with the gentleman from Oneida, in thinking that in its present shape, it led to universal suffrage. He concurred with gentlemen who had preceded him in the debate, that *residence* and *taxation* should be made the qualifications of voters.

Col. Young begged leave to remark, that in Massachusetts a poll tax was laid.

Gen. Tallmadge wished that the question on striking out and inserting might be divided.

Gen. Root objected, and said they were indivisible by the rules of the Convention.

Gen. Tallmadge therefore withdrew his motion, and substituted a motion to strike out " or on the highways,"—assuring the committee, however, that he should follow it up by moving the residue of the motion which he had the honour to submit this morning.

The question on striking out was then taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Beckwith, Birdseye, Bowman, Breese, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Case, Clyde, Dodge, Duer, Edwards, Fairlie, Fish, Hallock, Hunter, Hurd, Jay, Jones, Kent, King, Lansing, Lawrence, Lefferts, Millikin, Moore, Munro, Nelson, Paulding, Platt, President, Pumpelly, Radcliff, Rhinelander, Rockwell, Rogers, Rosé, Sage, Seaman, Seeley, Sharpe, I. Smith, R. Smith, Spencer, Stagg, I. Sutherland, Sylvester, Tallmadge, Tripp, Tuttle, Van Buren, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, A. Webster, E. Webster, Wendover, Wheaton, Wheeler, E. Williams, Wood, Woodward, Yates—68.

NOES—Messrs. Bacon, Baker, Barlow, Briggs, Carver, Child, D. Clark, R. Clarke, Collins, Day, Dyckman, Eastwood, Fenton, Ferris, Frost, Howe, Humphrey, Hunt, Hunting, Huntington, Knowles, A. Livingston, P. R. Livingston, M'Call, Park, Pitcher, Porter, Price, Richards, Root, Ross, Russell, Sanders, N. Sanford, R. Sandford, Schenck, Sheldon, Starkweather, Steele, Swift, Taylor, Ten Eyck, Townley, Townsend, Van Fleet, Ward, Wooster, Young—48.

After a few remarks on the order in which the other amendments before the committee should be taken up, the chair decided that the amendment of the gentleman from Washington was next in order.

Gen. Root supported the amendment at some length. As his own proposition had been voted down, he was willing to take that which approximated nearest to his own views.

Mr. Radcliff offered a few remarks on the amendment, in which he took occasion to say, that he could not see how gentlemen who voted in favour of persons of colour, could reconcile their vote with the one which they had just given.

Judge Van Ness moved that the committee rise and report.

Mr. Edwards begged to say one word in reply to his honourable colleague from New-York. His motives had been impeached for the vote he had given. [Mr. Radcliff disclaimed the intention to impeach the motives of any one.] Mr. E. continued, that his conscience acquitted him, and he was not ashamed to have his votes go forth to his constituents and to the world. He considered it no better than robbery to demand the contributions of coloured persons towards defraying the public burdens, and at the same time to disfranchise them.

The committee then rose, reported progress, and obtained leave to sit again.

Mr. Wheeler's amendment was referred to the committee of the whole, when on the report of the committee relative to the right of suffrage, and the usual number of copies ordered to be printed. Adjourned.

FRIDAY, SEPTEMBER 28, 1821.

Prayer by the Rev. Mr. Lacey. The President took the chair at the usual hour, when the minutes of yesterday were read and approved.

THE ELECTIVE FRANCHISE.

Mr. N. Sanford moved that the Convention now resolve itself into a committee of the whole, on the unfinished business of yesterday.

Before the question was put,

Mr. Hunter begged leave to offer several resolutions, relative to the qualifications of governor and senators, which were read, and

On motion of Mr. SHARPE, referred to the committee of the whole when on the executive department.

The Convention then went into committee of the whole on the unfinished business of yesterday. Mr. N. Williams in the chair.

JUDGE VAN NESS moved for a re-consideration of the vote of yesterday, for striking out the words "or on the highways."

COL. YOUNG was willing to re-consider the vote, since he believed those who worked on the highways are as much entitled to vote as those who do military duty; but he believed the motion was out of order.

An animated discussion on a question of order ensued, in which Messrs. Tallmadge, Root, Young, Sharpe, Williams, Van Buren, the President and Chairman took part; when it was decided that the question on postponing the amendment of Mr. Tallmadge was in order.

The question for reconsideration was then taken and carried in the affirmative.

COL. YOUNG then called for the consideration of Mr. Wheeler's amendment.

MR. WHEELER would detain the committee but a few minutes in explaining the reasons which induced him to propose the amendment. He was in favour of universal suffrage, with such exceptions and limitations as might be conducive to the public welfare.

Here MR. YOUNG suggested to the gentleman from Washington, (Mr. Wheeler,) if it would not be better to suspend his remarks till the blanks in the amendment were filled. Mr. Wheeler assented to the propriety of the suggestion.

COL. YOUNG then moved to fill the first blank with *two*, and the second with *one*, as terms of residence.

MR. TOMPKINS moved to fill the first with *three*, and the second with *one*. Mr. Young withdrew his motion, and the blanks were filled as moved by the President.

MR. WHEELER proceeded, and concluded his remarks.

JUDGE PLATT was opposed to the amendment, upon the ground that it was in favour of universal suffrage. He dwelt for some time upon the features of the amendment, and in reply to the remarks which had fallen from Messrs. Young and Wheeler, He thought three years, as a term of residence, was too long, since it would exclude many farmers who might emigrate and settle in this state.

COL. YOUNG followed in a speech of considerable length, in which he contended that all who contribute to the public burdens should enjoy the right of suffrage.

MR. BRIGGS remarked that we had arrived at a state when the only alternative was to tread back our steps, and restore the senate as it was, or adopt universal suffrage. He preferred the latter.

MR. VAN BUREN occupied the floor for some time in expressing his sentiments decidedly against the amendment, and against universal suffrage. We were hazarding every thing by going to such lengths in the amendments—the people would never sanction them.

MR. TOMPKINS supported the amendment, and thought too much alarm had been created by the bug-bear, universal suffrage. Taxation as connected with representation, meant liability to taxation. How was it when no taxes were imposed in this state? Was there no representation? The property qualification had always been an odious feature in the constitution; and as it would bear away with it a vast proportion of the perjuries, slanders, &c. that had often disgraced our elections, he hoped it would be abolished.

MR. BACON said, that he was glad that we had at last come to calling things by their right names; heretofore gentlemen had generally on all sides of the house disclaimed the intention of engrafting in our constitution the principle of universal suffrage, but had professed that it was their wish to restrict it within some substantial or definite bounds; we had however just been told by the honourable President of the Convention, that he was openly and decidedly in favour of every man who either directly or indirectly contributes to the public

revenue, or who in the smallest degree sustains any public burthen, having an equal right to vote; and of course that as every one, whatever be his character or station, contributes something by way of a tax upon the rum, tea, or sugar which he consumes, it followed that every man in society is a rightful and proper voter.

Ever since we lost our hold upon the great freehold anchor which had for forty years held us together, we appeared, as he had feared we should, to find ourselves afloat upon an open and untried sea; and the gentlemen from all quarters of the house are pointing us to one port after another in which they promise us some anchorage ground and some safety; yet as fast as we advance towards it, it seems to be relinquished as not worth the experiment. For himself, he had been with that small minority who was disposed still to adhere to the old freehold ground, so far as it respected one branch of the government; not so much on the ground of adding to the checking powers of the senate, as giving an artificial counterpoising weight to that branch—nor for the sake of giving to mere property, as such, and for itself, an additional weight in the government. Though something might be due these considerations—but it was rather on the principle of arriving through the medium of a property, particularly a freehold qualification, at a sort of moral and independent test of character, in the elector, which we could get at in no other practicable mode. And whatever might be said in a general sweeping way that property of itself conferred upon its possessor neither virtue, integrity, or talents, it could not be disguised that in this country at least, it was a safe general rule that industry and good habits did in almost every instance conduct the man that practised them, to some moderate share of property, and to a small competence, which only he would require. And of all other countries on earth, it was in a free republican frugal government like this, that such a qualification was the most reasonable one to require. To ask it of a man borne down by the burdens heaped upon him by an expensive and oppressive government, and born in a state of penury and dependance, from which, owing to the structure of the government, and the state of society, it was impossible he should rise, would be indeed but a mockery upon him. Not so here; there are indeed exceptions to it, as there are to all general rules, and many hard cases which cannot be provided for. Misfortune may overwhelm a worthy and industrious man, and for a time disqualify him; but this will generally be temporary and transient, and with a continuance of his good habits, he will soon again rise to his level, and to an enjoyment of his elective rights.

Of all other pecuniary qualifications, it was clear to him as a general rule, that a small interest in the soil, and the situation and habits of a small landholder and farmer, furnished the most probable test of character, and the greatest likelihood of finding united with it independence, sobriety, and safe intentions. It was for this class that the qualification was intended, as they comprised the great majority of our citizens, and not for the large landholders and wealthy speculators, whose numbers were few, and who could have but little comparative weight in the great body of small freeholders.

As to one branch of the legislature, he thought therefore it would have been wise to require this qualification for the elective suffrage, and we might then have extended it for the other branches to almost any extent which any gentleman could have asked for. Having been, however, overruled in this, he had been desirous, if practicable, to have fixed some definite and moderate limits to the general qualification;—at least to the extent of requiring the payment of a small pecuniary tax upon some sort of property to the general fund of the community, and this upon the same general principles which had influenced him in relation to the small freehold qualification.—In this too he had been overruled by a majority, who had against his vote decided that every man who is enrolled in the militia shall be entitled to vote for every elective officer in the state. It is indeed provided that only those who are armed and equipped shall vote,—but it is impossible to shut our eyes against what will be the practical execution of this provision, and that every man who can be mustered on a parade day will in fact vote. For what evidence are we to have of his equipment but the certificate of his captain, who is to be elected by the votes

of his company, none of whom he will be very likely to offend by holding them to a rigid compliance with a law which, but a small portion of them, as we are told, have ever been in the habit of complying with,—at least, he will hardly deprive his personal and party friends of a right of voting for a small failure in complying with the requirements of the law, and the list of our electors will thus be held at the will of a militia officer, subject to all his caprices, his party feelings, and personal attachments. This, then, in its operation, is little short of universal suffrage; at least of all citizens between twenty-one and forty-five years of age, and there can after that be no good reason for excluding those who are over forty-five, and not therefore liable to enrollment, especially as they will from their age, their experience, and their habits, probably be in general more discreet voters, than those of the same class of society who are younger. The few other persons which will be comprehended in the amendment offered by the gentleman from Washington will then make but little difference in the real characters and qualifications of our electors as settled by the militia list, and though in principle decidedly opposed to both, yet as the one has been adopted by a large majority, I can see little use in withholding the others. Indeed, why after this insist upon any other qualifications than those of age and residence, and if we are in truth, and to all practical purposes prepared to present the question of universal suffrage to the people, let us do it with as little disguise as possible, and not under the name of military duty or highway labour, affect to impose restrictions which in their operation will have little or no restraining effect, and will besides be liable in their execution to those obvious abuses, which instead of a protection will be at the best but a perversion of the elective franchise.

For these reasons only he should, he believed, vote for the amendment of the gentleman from Washington, though he should in the end vote against the whole proposition with which it was to be incorporated.

Mr. Steele moved to insert the word *white;* but this was declared by the chairman to be inadmissible, according to the rules of the house.

Mr. Dodge was in favour of some parts of the amendment. but disliked others. He made many prefatory remarks, and gave notice of his intention at a proper time, to offer an amendment calculated to meet the objects which he had in view.

Judge Platt explained, and Messrs. Burroughs and Young made further remarks in support of the amendment.

Chancellor Kent opposed the amendment, and assumed the ground that the principle it contained was more extensive than the reciprocity between taxation and representation, for which its supporters contended. The proposition covertly amounted to universal suffrage. The great object of government was the protection of property—life and liberty were seldom endangered in this country.

Gen. Root supported the amendment. Much stress had been laid on taxation in the course of the debate. There might be a time when no state tax would be necessary. Such a state of things had existed, and it had been predicted would again exist when the grand canal was finished. Would gentlemen have no voters in such halcyon days?

Mr. Radcliff was for universal suffrage. Public sentiment called for it. Provision had been made for nearly all, and the remnant ought not to be excluded. Authorities cited from foreign writers, and precedents drawn from other governments, were wholly irrelevant—the people of this country, above all others, were intelligent and virtuous—he was not afraid of them. The argument drawn from the rise of populous cities was fallacious—town and country increase in the same ratio.

Mr. King said if any gentlemen had supposed him to be in favour of universal suffrage, as their language would seem to imply, they had grossly misapprehended his sentiments. In his view such an extent of the elective privilege would be in the highest degree dangerous—no government, ancient or modern, could endure it. So far as he was acquainted, public opinion did not require it—he was certain this was so in the quarter of the country which he represented, and he believed the same sentiments were entertained by the people of

the west. He was acquainted with the country whence most of them emigrated, and with their fathers, and was confident the sons of such sires could not entertain such extravagant sentiments. The protection of property and the encouragement of honest industry constituted the basis of civil society, and were the primary objects of government. The possession of property was generally an indication of other qualifications. He would exclude all who had not the capacity to discriminate between candidates, nor the independence to exercise the right discreetly. In his view universal suffrage was perilous to us and to the country; and if it were sanctioned, he should regret having been a member of this Convention.

Mr. Starkweather wished some provision to be made against permitting shoe-blacks and stragglers from voting; and proposed an amendment to that effect.

Col. Young said the gentleman's wishes could hereafter be gratified—at present it would not be in order. Mr. Y. spoke for some time in reply to Messrs. Kent and King. He adverted to the constitutions of Massachusetts and Connecticut, and said that all who paid a poll tax had a right to vote in those states.

Mr. King remarked that the poll tax was not universal.

Mr. Radcliff remarked, that if the argument of the gentleman from Queens was correct, a re-consideration of some of our proceedings appeared to be necessary. Some discussion took place between Messrs. Van Buren and Young on the consequence of the vote, and with what understanding the question would be decided.

Gen. Tallmadge assigned the reasons which would induce him to vote in favour of the amendment.

Mr. Van Vechten then occupied the floor about half an hour in opposition to the amendment. He recapitulated and enlarged upon the considerations which had been urged against the amendment, and pointed out the injustice and danger attending universal suffrage. In his opinion, public sentiment on this subject had been grossly misunderstood, and gentlemen had been deceived by the channels through which it came.

The question on Mr. Wheeler's amendment was then taken by ayes and noes, and decided in the affirmative as follows:

AYES—Messrs. Bacon, Barlow, Breese, Briggs, Brooks, Burroughs, Carpenter, Case, D. Clark, R. Carke, Clyde, Collins, Cramer, Day, Eastwood, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunting, Hurd, A. Livingston, P. R. Livingston, M'Call, Millikin, Park, Pike, Pitcher, Porter, President, Price, Radcliff, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, N. Sanford, R. Sandford, Schenck, Seeley, R. Smith, Starkweather, Steele, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Fleet, A. Webster, Wheeler, Wooster, Yates, Young—63.

NOES.—Messrs. Barker, Beckwith, Bowman, Buel, Carver, Dodge, Duer, Dyckman, Edwards, Fairlie, Fish, Hallock, Hunter, Huntington, Jay, Jones, Kent, King, Lansing, Lawrence, Lefferts, Moore, Monro, Nelso, Paulding, Platt, Pumpelly, Reeve, Rhinelander, Rogers, Rose, Sage, Sanders, Seaman, Sharpe, Sheldon, I. Smith, Spencer, Stagg, I. Sutherland, Sylvester, Van Buren, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, E. Williams, Wood, Woodward.—55.

The committee then rose, reported progress, and obtained leave to sit again, and the Convention adjourned.

SATURDAY, SEPTEMBER 29, 1821.

The Convention assembled at 9 o'clock. Prayer by the Rev. Dr. CUMMING. The minutes of yesterday were then read and approved.

THE ELECTIVE FRANCHISE.

MR. EDWARDS offered the following resolution:

Resolved, That the committee of the whole be discharged from the further consideration of the report of the select committee appointed to consider the right of suffrage and the qualification of persons to be elected, and that the same, together with the amendments made thereto in committee of the whole, be referred to a select committee consisting of thirteen members, and that the committee also report their opinion upon the expediency of excluding people of colour from the right of suffrage.

In explanation of the reasons which induced him to offer the resolution, Mr. Edwards remarked, that the object of this Convention, was to form such a constitution as would meet the approbation of the whole community—a constitution that would be deeply rooted in the affections of the people. All were in favour of granting to every man who was qualified to vote the elective privileges; but there were certain limits, beyond which we ought not to go. A select committee might embody the sentiments of all the members, and harmonize their different views.

COL. YOUNG said he was about to move, that the committee of the whole be discharged from the further consideration of the report on the right of suffrage, with a view that it might be referred back to the select committee. It was his intention to offer, at a proper time, an amendment by inserting the word "white," so as to read "white male citizens." The committee has settled that the right of suffrage shall be extended; the vote was a strong one, and by members of the Convention who understand the subject as well as the gentlemen from New-York and Albany. Sir, many of the gentlemen in the majority upon this question are from the country; and know more about the feelings of the yeomanry, than those who, from their wealth, habits, and official stations, do not mingle among the people.

MR. SHARPE thought the motion of the gentleman from Saratoga was not in order, and would lead to embarrassments.

COL. YOUNG replied, that there was no danger of another entanglement. He proposed to move, in the first place, that the committee of the whole be discharged; and next, that the report be re-committed to the select committee who had originally made the report. He had supposed that they were as well qualified as others to act on this subject; but as the gentleman from New-York thought otherwise, he had no objection that another committee should be created.

After some further discussion between Messrs. Edwards, Young, King, Root, and the President,

GEN. ROOT objected to the resolution offered by the gentleman from New-York, (Mr. Edwards) on the ground that it was premature. The subject should be gone through with in committee of the whole. Gentlemen have promised that when the report of the committee of the whole is before the house, they would move certain amendments, and he presumed they would fulfil their promise. It would then be time to refer it back to a select committee to have the amendments which have been made put into a compact form. With a view of having it take this course, he moved that the resolution offered by the gentleman from New-York, (Mr. Edwards) lie on the table, for the purpose of going into committee of the whole on the subject.

This motion was not seconded.

MR. EDWARDS observed, that the amount of what gentlemen opposed to him had said, was, that the Convention was not master of its own business. Sir, we have a right to manage our business as we please. The favour now asked, is the boon of a very large and respectable minority of this Convention, and of a

large portion, I will not say of a majority, of the people of this state. It is, sir, to have a little delay—that the subject may be calmly reviewed by a new committee, in no way shackled by any former official act. He had hoped, that to a request so reasonable, there would have been no opposition.

Mr. Wendover made a few remarks.—If the motion were reversed and modified, he would have no objections to it; but in its present shape, he should be compelled, though unwillingly, to vote against it.

Mr. R. Clarke thought we should gain nothing by referring the report to a select committee. There were certain great and leading principles, which ought to be settled in committee of the whole, before the report was referred back to a select committee, whose duty it should be merely to reduce to a proper form what had been discussed and adopted.

Mr. Briggs. The gentleman from New-York appears to wish to undo all we have yet done, sir. Sir, it appears to me to be all mummery. We have agreed to universal suffrage, and I hope we shall stick to it. Sir, we should agree here only to general principles; but we seem to be splitting on details.

Mr. Hogeboom wished the subject might be referred back again to a select committee, in order to have some restrictions on this system of universal suffrage.

The question having been divided agreeably to the suggestion of the gentleman from Saratoga, (Mr. Young,) was first taken on discharging the committee, and carried.

Mr. Wheeler wished to move an amendment. The President decided that it was out of order to receive any amendment other than to the motion of the gentleman from New-York, (Mr. Edwards.)

Col. Young contended that it was in order, and appealed from the decision of the chair.

A desultory debate here ensued on the question of order, when

Gen. Root said it was unfortunate that there had been more difficulty in relation to the rules and orders in the short time that the Convention had been in session, than there ever was during the whole of any session of the legislature. Probably this is because the members are very well informed upon every other subject except rules and orders. They soar above these trifling matters. Certainly the decision of the chair was correct.

Col. Young withdrew his appeal, and after some further conversation, the question was taken on the second part of the resolution offered by the gentleman from New-York (Mr. Edwards,) and carried.

Ordered, That the committee consist of thirteen members, who were subsequently designated and appointed as follows, viz.

Messrs. Young, Wheeler, Taylor, R. Smith, Rogers, A. Livingston, Bowman, Collins, Bacon, Burroughs, Fenton, Dubois, and Dyckman.

Mr. Munro submitted the following resolution which he wished referred to the committee just appointed.

Resolved, That the right of suffrage for all elective officers be vested in all the resident male citizens of this state, of the age of twenty-one years, who now are, or hereafter shall be, legally settled in the several cities and towns of this state, according to the present provisions in relation to settlement, now established by law.

Resolved, That in each city and town a register shall be kept, in which the names of the several electors settled in such city or town shall be inscribed, in such manner, by such officers, and subject to such regulations as shall be prescribed by law; and while the name of any elector shall continue inscribed in such register, and he continue actually to reside in such city or town, he may vote in that city or town for all elective officers whatever; and upon his removal to any other city or town, his name shall be inserted in the register of the town to which he shall remove, upon producing the certificate of the proper officer of the city or town from whence he shall have removed, certifying that he is an elector of that city or town.

Referred accordingly.

Judge Platt, following the example of the gentleman from Westchester, begged leave to offer the following resolution:

Resolved, That every male citizen of the age of 21 years, who shall have an interest in his own right, or in the right of his wife, in law or equity, of the value of $250, over and above all debts charged thereon, in any lands or tenements in this state, at the time of offering his vote at any election; and also every male citizen of the age of twenty-one years, who shall have been one year next preceding the day of election, an inhabitant of this state, and for the last six calendar months a resident in the city, town, county, or senatorial district where he may offer his vote, and who shall within the year next preceding have been regularly rated and assessed to the amount of fifty cents or upwards, for any state, county, city or town tax or taxes, in money, pursuant to law, (not including any assessment for highways) and who shall have actually paid such tax or taxes, shall be authorized and empowered to vote for governor, lieutenant-governor, senators, members of assembly, and all other elective officers: *Provided*, that no person shall vote at any election, except in the town or ward in which he shall reside at the time of the election.

Referred to the same committee.

Mr. Wendover submitted the following resolution, which obtained a similar reference:

After the word *years* in the second line add,

"Excepting people of colour, and Indians, not possessing taxable freehold property within this state, of the value of two hundred and fifty dollars."

Mr. Sharpe moved that the following proposition of Mr. Duer (now absent) be referred to the same committee.

Strike out all after the word "year" in the second line, for the purpose of inserting as follows:

"Next preceding the election at which he shall offer his vote, an inhabitant of this state, and for the last six months of that period a resident of the city, ward, or town in which such election shall be held, and shall within the said year have actually paid a state or county tax assessed upon his real or personal property, and the sons of persons thus qualified, of the age of twenty one years, and residing in the family of their parents, shall be entitled to vote for all officers that now are or hereafter may be elected by the people."

The amendment was referred accordingly.

Gen. S. Van Rensselaer moved to refer the amendment submitted several days since, to the committee of the whole, and withdrawn, to the same committee. That amendment was in the words following:

Every male citizen of the age of 21 years, who shall have resided in the state one year, and in the city or town where he may claim to vote, six months preceding an election; and within the last two years, shall have been assessed, and paid a state, county, or town tax; together with the sons of citizens qualified as aforesaid, above the age of 21 years, and not exceeding   years, who may neither have been assessed, nor paid any such tax, shall be entitled to vote for governor, lieutenant-governor, senators, members of assembly, and for every other officer to be elected by the people.

Referred accordingly.

Mr. Birdseye offered the following resolution, which was referred to the same committee:

Strike out the first section of the report of the select committee, and insert,

I. *Resolved*, That all persons embraced in the four following cases, shall be entitled to vote for all officers to be elective by the people:

1st. Every free male citizen of this state of full age, who shall for six months preceding an election, have possessed in the county where he may offer his vote, an interest in land either as a freeholder or under a contract of purchase to the value of $100, over and above all debts charged thereon.

2d. Every free white male citizen of this state, who shall for six months preceding an election, have occupied in the county where he offers to vote, either as a tenant, as a freeholder, or under a contract of purchase, a tenement of the yearly value of 5 dolls.

3d. Every free white male citizen of this state, of full age, who shall within two years preceding the election at which he offers his vote, have been rated and actually paid taxes in the county where he offers to vote, upon any assessment of the amount of 50 dollars, for town, county, or state charges, on real or personal property.

4th. Every free white male citizen of this state, of full age, who being armed and equipped according to law, shall for one year preceding an election have performed militia duty required of him by law in the militia of this state: but no person shall vote but in the town in which he shall then reside, nor unless he shall have been an inhabitant of the state for one year, and of the county where he offers to vote for six months preceding an election.

Mr. Radcliff offered the following resolution, which obtained a similar reference:

Resolved, That the committee be instructed to inquire into the expediency of adding the following to Mr. Root's amendment. After the word state, in the tenth line, add:

"And provided, however, that no citizen, other than a white male citizen, who shall not for the year next preceding have been so assessed and actually paid a tax, either to the state or county, upon a real or freehold estate, of which he was seised, shall be entited to vote at any such election; and that no other than white citizens shall be liable to be assessed, or to pay any personal tax, or any tax on any personal estate whatever."

Mr. R. Smith offered the following, which was also referred to the same committee:

Resolved, That every male citizen of the age of twenty-one years, who shall have been one year an inhabitant of this state, and for six months a resident in the town, county, or district where he may offer his vote, and shall have been for the year next preceding assessed, and shall have actually paid a tax, either to the state, county, or town, or being armed and equipped according to law, shall have performed within that year military duty in the militia of this state; and also all ministers of the gospel, being citizens, and every other white male citizen of the age of twenty one years, who shall have been three years an inhabitant of this state, and for one year a resident in the town or city where he may offer his vote; and has during the said year been assessed and actually paid a tax on the highway, or commuted therefor, shall be entitled to vote in the town or ward where he may then actually reside, for any elective officer in this state.

The President observed that the business next in order, would be the consideration of the report of the select committee, on that part of the constitution which relates to the legislative department.

On suggestion of Mr. King, that subject was postponed.

FUTURE AMENDMENTS.

On motion of Mr. Van Buren, the Convention then resolved itself into a committee of the whole, on the report of the committee to whom was referred the subject of future amendments of the constitution. Col. Young in the chair.

Gen. Root moved to strike out that part of the report from the word *and*, in the ninth line, to the word *then*, in the sixteenth line, which required a second reference to the legislature, so that an amendment which should at any time have received the sanction of two-thirds of that body, shall be presented at once for the final review of the people.

In support of the amendment, he observed, that he thought there was too much complexity in the machinery, and bolts and hoppers of the political mill,

before the final process should present the superfine flour in the receiver. No amendment could ever be consummated in this protracted and tedious way. The subject would be forgotten by the people before they ultimately came to act upon it. It would indeed be published in the newspapers, and read about as often as the advertisements of mortgage sales, which might occupy the contiguous columns. There was no necessity of presenting the subject twice to the legislature.

Mr. Van Vechten, as a member of the committee which had presented the report, thought it expedient to state a brief outline of the reasons that had induced the committee to offer it.

The principle of the report was borrowed from the late amendments of the constitution of Massachusetts

The object of requiring its passage by two-thirds of two successive legislatures, was, that the attention of the people might be called to the subject, and sufficient time given for deliberation upon it ; and it is probable that the members of the second legislature would be chosen with special reference to the subject. The constitution, he said, should not be altered for light or trivial causes. Its amendment should be the result of calm and dispassionate reflection, not of sudden and strong excitement.

Mr. Sharpe was opposed to striking out. After the constitution should be made, he hoped it would be united in by the Convention and the people, and suffered to remain long enough to give it a fair experiment. Sir, in this way, we shall be making amendments too cheap. The legislature will always be troubled with propositions from various parts of the state, to alter the constitution, and these from one place or another, will be received year after year. Experience will warrant this conclusion, from what has taken place in regard to the constitution of the United States. Sir, a session of congress never passes, in which much time is not occupied in discussing amendments to that constitution.

Gen. Root. It seems that such perfection will be obtained in the instrument about to be made, as never to require amendment. It is to be the very essence of perfection, and will remain forever unalterable. We have been told that we must make a constitution for future ages, when this state shall become populous and corrupt. In that case, it ought to be so made as to be capable of alteration, so as to check the first appearance of corruption. It will undoubtedly require alteration, as the condition of society may change. If the people foresee that the constitution we present to them is susceptible of amendment they may adopt it, even though some of its provisions may be obnoxious. But if an insuperable barrier is placed in the way of future alteration, its adoption may be very doubtful. The constitution of the United States would never have been ratified, had it not been capable of amendment.

It had been said, that the second legislature will bring with them the sentiments of the people on the subject. If so, where is the benefit of referring it to the people at all ? He thought the constitution of the United States had not been sufficiently liberal on this subject, and that many salutary amendments had been prevented. In this Convention, a bare majority is expected to make such a perfect constitution, that the unhallowed hands of posterity must never pollute it with their touch. He was not willing that the motto *Noli me tangere*, should be inscribed upon it.

Chief Justice Spencer said, when he read this report he did think that we should unanimously adopt it, without amendment, and that we should have the satisfaction of agreeing on one point at least. But he now despaired of realising his hopes and expectations. The amendment of the gentleman from Delaware appeared to him to be a mischievous one, though he did not charge him with that intention. He explained the provisions of the report, and thought they were such as every member must approve. It afforded him pleasure to see incorporated in this report one principle, which he had mentioned in a former debate—he meant the principle of submitting the question to the people in the first instance, whether they would amend the constitution. The gentleman from Delaware had complained, that there would be a great delay in effecting any amendments. Mr. S. did not apprehend any difficulty on this score—he

hoped the constitution would not be left so imperfect, that the postponement of an amendment for two years at farthest, would be a serious grievance.

It had once or twice been thrown out in debate, that the amendments to the constitution would be submitted en masse to the people.—He was sorry to see this subject introduced at this stage of our proceedings, and could not but think it premature. At a proper time it would regularly come before the Convention, and be a subject for discussion.

Mr. Van Buren rose merely to correct an idea that seemed to be entertained that he was in favour of an entire new constitution. The fact, he said was otherwise. He preferred to engraft amendments upon the existing one; and he had only expressed his fears that such a course might be rendered unavoidable from the very numerous and essential alterations that had been proposed.

Gen. Tallmadge concurred in the remarks that had fallen from the honourable gentleman from Albany, (Mr. Spencer) and had hoped that this report would have been unanimously adopted. If the motion of the gentleman from Delaware should prevail, it would result that the vital principles of the government might be entirely changed, and its most important and valuable institutions overturned, in the short period of six or seven months. It necessarily devolved upon the legislature to fix the time when it should be submitted for its final ratification by the people; and thus essential and momentous principles might be introduced under the impulse of sudden excitement. Three-fourths of the states, instead of two-thirds, are required to sanction amendments to the constitution of the United States; and the time necessarily required to obtain that sanction, was very considerable. But even there, it had been shewn from experience, that amendments were liable to be obtained with too great facility. It had been appended as a thirteenth article to the amendments of that constitution, in the laws of the United States, published under the direction of the then secretary of state, and attorney general, that any person who should accept of any present, pension, patent of nobility, &c. from any foreign prince, potentate or power, should be thenceforth disfranchised. And it had been inferred that a soldier, by having enlisted in the Spanish service in Florida, and received the bounty of a dollar, was no longer entitled to the privileges of an American citizen. The amendment had been proposed at the time the nation was in a ferment respecting young Bonaparte, who received a pension from France. It was found, however, on examination, that fortunately the concurrence of one more state was wanting, so that this preposterous amendment was prevented from becoming a part of the constitution of the United States. He hoped, therefore, that this committee would not embrace a principle liable to such dangerous consequences.

Gen. Root then withdrew his motion, and moved to strike out the words *two-thirds*, and to insert the word *majority*, so as to require the passage of a proposed amendment by a majority only, when it should be a second time presented to the consideration of the legislature.

Mr. P. R. Livingston preferred to have the majority referrable to the first legislature rather than the second, and hoped the mover would consent to vary his motion accordingly.

Gen. Root preferred to retain it in its present shape. He thought that the first legislature would be more apt to be hurried away by the impulse of party than the second.

Mr. Van Buren made a few remarks in opposition to the motion.

The question was then taken and decided in the negative, by a large majority, only fourteen voting in the affirmative.

Mr. Wendover moved an amendment, to render more definite the contemplated publication, by adding after the word published, " in at least one newspaper in each county in this state, in which a newspaper shall be printed."

Mr. Van Vechten thought that the manner of the publication might with propriety be left to the determination of the legislature.

Mr. Wendover's motion was then put and negatived.

Judge Platt did not rise to object to the report—he heartily approved of it. There was one ambiguous phraise, however, which he wished to see amended. The words " *the people*," which occurred in the 18th line of the report appeared

to him not to be sufficiently definite. There were frequently warm disputes who were the people—party after party sprung up, all claiming to be the people, and in some cases it might become a subject of doubt, who were meant to be comprehended in the term. One might say that this or that party were the people—another, that the freeholders only were included in the term—a third, that the whole mass of the community were the people. This ambiguity might lead to serious difficulties, and he thought we had better substitute a term more definite. He moved to strike out the words "*the people*," and to insert instead thereof, the clause in the act of the legislature recommending a Convention, and defining what persons should be entitled to vote. It was a fair principle, that all who had a voice in making this constitution, should also have a voice in amending it, and no others.

Mr. E. Williams opposed the motion of the gentleman from Oneida, (Mr. Platt.) The last words which he should vote to strike out, would be "*the people*," because we all agree that *the people* are the only sovereigns of this state. There is, however, a difference of opinion as to what constitutes the people. Some think the people comprise the whole mass of the population, and in this sense it has been used by the committee who made this report. We should therefore retain it as reported. The select committee have wisely provided that as it regards future amendments, the whole shall be heard, male and female. The better half of *the people* will then advise with their fathers, husbands, sons and brothers, and thus there can be no doubt but *the people* will arrive at correct conclusions. And to save those better halves the trouble of voting, the committee have deputed those who usually represent them, to go and vote on this occasion.

The motion of Mr. Platt was lost.

The question was then taken by ayes and noes on the whole report, and decided in the affirmative unanimously.

The committee thereupon rose and reported the same complete.

Mr. Spencer moved that the report of the committee on the appointing power be made the order of the day for Monday next. Carried.

Mr. Wheaton offered the following resolutions:

Resolved, That the constitution ought to be so amended, as to provide, that it shall be the duty of the legislature to make uniform laws on the subject of private corporations, and that no religious, or civil, or elemosynary corporation, (except for the government of cities and towns,) shall hereafter be established, unless according to the general rules and regulations prescribed from time to time in such laws: *Provided*, that nothing herein contained shall be construed to impair the obligations of the charters already granted to the several corporations in this state.

Resolved, That the constitution ought to be so amended, as to provide, that the legislature shall make no retrospective law, or act, divesting the rights of property, legally vested in any person or body politic at the time of the passage of such act.

Resolved, That the constitution ought to be so amended as to provide, that no person shall be compelled to frequent or support any religious worship, place, or ministry whatsoever; (except according to such private contract, as he, or any corporation of which he is a member, may voluntarily make for that purpose,) nor shall be restrained, molested, or burthened, on account of his religious opinions or belief, and the same shall not affect his civil capacities, and no religious test shall ever be required as a qualification to any office or public trust under this state.

Resolved, That the constitution ought to be so amended, as to provide, that the rights and privileges of the corporations called the college of physicians and surgeons in the city of New-York, the trustees of Columbia college in the city of New-York, of Union college, Hamilton college, and of all other colleges and academies which have been, or shall be incorporated by the regents of the university of this state, pursuant to an act of the legislature entitled "an act relative to the university," passed April 5th, 1813, are hereby ratified and confirmed.

Resolved That the constitution ought to be so amended, as to provide, that it shall be the duty of the legislature to make laws requiring the several cities

and towns in this state to assess, levy, and collect, on the real and personal property therein, such sums of money as may be necessary (in addition to the amount to which each city and town may be entitled from the interest of the common school fund) for the purpose of establishing and keeping public and common schools in every such city and town, for the instruction of all the children therein.

Resolved, That the above resolutions be referred to the committee of the whole house, when on the reports of the select committees on the legislative department and the bill of rights.

Mr. Ross submitted to the Convention the following resolution:

Resolved, That the person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

Ordered, that the aforesaid resolutions be printed.
Adjourned.

MONDAY, OCTOBER 1, 1821.

The Convention assembled at the usual hour. Prayer by the Rev. Mr. Lacey. The minutes of Saturday were then read and approved.

Mr. Ross moved that the practice of recording ayes and noes when in committee of the whole, be henceforth abolished. He observed that questions were taken in committee, upon distinct propositions, which if acted upon in connection with other propositions, might produce a different vote; and the result was often such as to bear the appearance of inconsistency, although no real inconsistency existed. It had a tendency also to premature commitment for the sake of preserving that apparent consistency.

Mr. Sharpe. We have now arrived at an important crisis. We are about to proceed on the most important subjects that will perhaps come before this Convention. For my part, sir, I shall want my vote recorded on every question that may be taken.

Gen. J. R. Van Rensselaer supported the motion to amend. The practice of taking the ayes and noes in committee of the whole, does not prevail in congress, nor in any of the state legislatures except our own. It is a practice that ought never to have been adopted, and we ought to abandon it as soon as possible.

Gen. Root. It seems we are upon rules and orders again. He hoped at all events that they should have the ayes and noes upon this question, that the people may know who are afraid to have their votes recorded upon the journals. The proposition is infringing a long established usage. But it seems gentlemen are afraid they shall in some cases be obliged to change their votes. He liked to see gentlemen have the magnanimity to change their votes, when convinced that they had been in error. He concluded by calling the ayes and noes.

Mr. Ross was as willing as the gentleman from Delaware, to record his name on proper occasions, but by the present practice, gentlemen are compelled to record their votes prematurely. It could not be known what would be the precise effect of separate propositions, until the whole should be combined.

Chief Justice Spencer, as a division had been called, briefly assigned the reasons which would induce him to vote for the amendment. In the committee of the whole, we are merely preparing business to be solemnly settled in the Convention. Every principle settled in committee of the whole, must finally be passed in Convention. Who, then, will be deprived of the right of recording his vote? We are, besides, encumbering our journals too much, by recording divisions upon every question taken in committee.

A few words in addition passed between two or three other gentlemen, when,

On motion of Mr. Bacon, the further consideration of the amendment was postponed till to-morrow.

THE APPOINTING POWER.

On motion of Mr. VAN BUREN, the house then resolved itself into a committee of the whole, on the report of the committee on so much of the constitution as relates to the power of appointments to office, and the tenure thereof. Mr. Lawrence in the chair.

MR. TOMPKINS approved heartily of that part of the report which related to the militia, and with a few modifications hoped it would be adopted. He believed the militia would flourish more under this system, than it ever had done before.

MR. FAIRLIE thought it would be better to settle the question whether we would abolish the council of appointment, before the report was acted on.

CHIEF JUSTICE SPENCER also thought that question should first be settled.

MR. TOMPKINS wished the first section, (abolishing the council of appointment,) might be passed over. The question involved in it might better be postponed until it should be settled in what manner the appointing power shall be disposed of, or distributed. Even if the council should be retained, we have the right to modify the power, and at all events to determine in what manner militia officers shall be appointed. Mr. T. moved to pass by the first section for the present.

GEN. J. R. VAN RENSSELAER thought it was idle to go on and provide a substitute, before it was known whether the Convention was opposed to the old council.

MR. SHELDON preferred that the substitute should be first provided, that members would see what the new system would be. The members will then have an opportunity to choose between the new and the old.

MR. BACON could not see why a different course should be adopted in regard to the mode of proceeding upon this report, from what had been pursued in other cases. A vote was first taken to abolish the Council of Revision, and a substitute was provided afterwards.

THE CHIEF JUSTICE spoke a few words in favour of settling the question on the first section first. He could not see the force of the objections offered by the gentleman from Richmond, (Mr. Tompkins) or those of the gentleman from Montgomery, (Mr. Sheldon.)

MR. EASTWOOD called for the ayes and noes on the question whether the first section of the report should be passed over, and it was decided in the negative, 77 to 26, as follows.

NOES—Messrs. Bacon, Baker, Beckwith, Bowman, Briggs, Brooks, Buel, Carver, Child, R. Clarke, Eastwood, Edwards, Ferris, Frost, Hallock, Hees, Howe, Hunt, Hunter, Huntington, Hurd, Jay, Jones, Kent, King, Knowles, Lefferts, A. Livingston, M'Call, Millikin, Moore, Munro, Park, Paulding, Pitcher, Platt, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rogers, Root, Rose, Ross, Russell, Sage, N. Sanford, R. Sanford, Seaman, Seeley, Sharpe, I. Smith, R. Smith, Spencer, Stagg, Starkweather, Steele, Swift, Sylvester, Tallmadge, Ten Eyck, Townley, Tuttle, Van Horne, Van Buren, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, E. Webster, Wendover, Wheaton, E. Williams, N. Williams, Woodward, Wooster—77.

AYES—Messrs. Barlow, Birdseye, Breese, Brinkerhoff, Burroughs, Case, Collins, Cramer, Day, Dodge, Dubois, Dyckman, Fairlie, Fenton, Lawrence, P. R. Livingston, Pike, President, Price, Rockwell, Sheldon, Taylor, Van Fleet, Ward, Woods, Yates—26.

The question on the first section, for abolishing the council of appointment, was then taken by ayes and noes, and carried in the affirmative, UNANIMOUSLY, 102 members being present.

MR. TOMPKINS suggested sundry amendments, and finally moved a substitute for the 1st, 2d, 3d, and 4th sections of the report of the select committee; but he consented to waive his propositions for the present, in order that the chairman of the committee who made the report, might explain the views of the committee, and the principles upon which they had founded their report.

MR. VAN BUREN, (chairman of the committee upon this subject) gave a general view of the reasons which had influenced the select committee in adopting the report now under consideration. The subject was one surrounded with

numerous difficulties; some of which were intrinsic and not to be avoided by any course that could be devised. They had framed a system, which, after much reflection, appeared to them to be liable to the least and fewest objections.

The first question which presented itself for the consideration of the committee, was the propriety of abolishing the Council of Appointment. On this subject there was no difficulty; the same unanimity prevailed among the members of the select committee in this respect, as in the vote which had just passed in committee of the whole, for the abolition of this power; and in this, they had only acted in accordance with public opinion, by which this feature of the old constitution had been condemned. He would not, he said, detain the committee by giving any reasons for this part of the report; after the unanimous vote just given, this would be a wanton waste of time.

The next and more important enquiry, was, with respect to what should be substituted in its stead; and here, as was to be expected, a diversity of sentiment prevailed, and many difficulties presented themselves. For the purpose, however, of lessening, as far as was practicable, the objections that would necessarily exist to any general appointing power, wherever placed, or however constituted, they had felt the propriety of reducing the patronage attached to it; and they had, with that view, separated from it the great mass of the officers of the state. Many of them, they had sent to be appointed, or elected, in the several counties or towns, and others they had left to the disposition of the legislature, to provide for their appointment or election, as experience might prove to be most advisable.

Of the 8287 military officers, they had recommended that all except 78, consisting of major generals, brigadier generals, and the adjutant general, should be elected by the privates and officers of the militia.

Of the 6663 civil officers, now appointed by the Council of Appointment, they recommend that 3643 should be appointed or elected as the legislature should direct—these were auctioneers, masters in chancery, public notaries, inspectors of turnpike roads, commissioners to acknowledge deeds, examiners in chancery, inspectors for commercial purposes, and some other officers. They also recommended that the clerks of counties, and district attorneys, should be appointed by the courts of common pleas, in the several counties. And that the mayors and clerks, of all the cities except New-York, should be appointed by the common council of the respective cities.

Thus far, no great diversity of sentiment had existed among the members of the committee, and there had been a general concurrence of opinion, on all the parts of the report already noticed.

This, together with the justices of the peace, which a majority of the committee had recommended to be elected, left only 453 officers for whose appointment, or election, it was necessary to provide.

In addition to the curtailment of the appointing power, to be retained at the seat of government; the committee, under a full conviction that much of the complaint against the existing Council of Appointment, had arisen from the circumstance of the concentration of power in one body, had thought it wise even here to distribute them; by giving the appointment of the heads of the different departments of this state to the legislature; they being officers entrusted with the public property, whose duties more immediately connected them with that body.

Still, some officers were left; small in number, it was true, but of considerable interest and importance. They were unanimously of opinion, that it would be improper for some of these officers to be elected by the people, and a majority of them supposed that none of them ought to be so elected.

It became necessary, therefore, to provide for their appointment; and to establish what may be called a general appointing power; though limited in the exercise of its functions, to the bestowment of a small number of offices.

Four plans presented themselves to the consideration of the committee.

1st. To create a new Council of Appointment, to be elected by the people.

2nd. To vest the power of Appointment in the Executive solely.

3rd. To give it to the Legislature. Or,

4th. To the Governor, by and with the advice and consent of the Senate.

These respective modes had been, he said, discussed and attentively considered by them. The project of electing a council, was thought liable to most of the objections which had been urged against the old council. There would be a want of responsibility, as now. And it was apprehended that their election would create a great excitement. The incumbents in office, and those desirous of obtaining offices, together with their respective friends, would, of course, feel a deep interest in the election of this council; and this would, of course, pervade every part of the state. Or, if such a council were to be chosen by the legislature, not from among the members of either house, though by being separated entirely from the business of legislation, would remove a part of the objections existing with respect to the present council. It was believed it would, notwithstanding, be attended with serious objections. It would necessarily produce some objection in the legislature, if they met at a different time or in a different place: yet the objection of irresponsibility, would remain in full force.

The Convention had already increased the powers of the executive, and the committee were unwilling to add to it the patronage of the sole power of appointment to office. Besides their own conviction that this was not advisable, they were perfectly confident that public opinion was opposed to such a regulation.

Nor were they satisfied that it would be proper to vest this power in the two branches of the legislature. They had already recommended that the appointment of some officers should be made by them, for reasons he had already explained; and these were all they thought ought to be appointed in this way.—In some of our sister states, this mode of appointment obtained, and had been found to operate beneficially; they were, however, differently circumstanced from us, having a less numerous population, and a smaller extent of territory. They had considered a connexion between the legislative and appointing power, as at best objectionable; the improper influence that such connexion was apt to have on legislation, was fully appreciated by them; and had induced them to recommend a mode, which, though not free from this objection, yet lessened the difficulty, by limiting the connexion to one branch only.

And this brought them to the fourth, and last plan mentioned, to wit: vesting the power in the governor and senate. This, he believed, they had unanimously considered as unaccompanied with the fewest objections; he might possibly be mistaken, but he was confident they were unanimously in favour of this project in the first instance.

The committee, he said, were fully aware of the objection to this mode, arising from the unfavourable effect which the possession of the power of appointment was calculated to produce upon the senate as a branch of the legislature; but more particularly from its being a court of the last resort. But they also knew that no plan could be adopted which would be free from objections of some kind—they knew that it was the fate of all human institutions to be imperfect, and they were therefore more content with the system they had recommended, than they otherwise would have been. They found, too, that they could not exempt the general appointing power from this objection, unless they gave it wholly to the governor, or to him in connexion with a council to be elected by the people; the former mode they had no reason to believe would be acceptable to any portion of the Convention; and the latter, they supposed, would not, in all probability, be relished by their constituents much better than the retaining of the old council.

They had not, he said, been able to derive any material benefit from an examination of the practice of other states. They had examined all their constitutions, and found that they varied greatly from each other. In Pennsylvania and Delaware, the power of appointment to office is vested in the governor singly. In Maine, Massachusetts, Maryland, North-Carolina and Virginia, the governor, and a council similar to ours. In Connecticut, Rhode-Island, Vermont, New-Jersey, South-Carolina, Georgia, Ohio, Tennessee, Mississippi, and Alabama, in the legislature. New-Hampshire was the only state in which they had a council chosen by the people. In Kentucky, Louisiana, Indiana, Il-

linois, and Missouri, the power is vested in the governor and senate as is proposed by the report.

The fact that the constitutions which had been recently formed, and might therefore be in some degree regarded as the most recent expression of the sense of a portion of the American people, were in unison with the plan they had reported, and calculated in a measure to recommend it. And so, likewise, was it, that a similar provision was contained in the constitution of the United States. But here, candour required the acknowledgment that there was an important difference between our state senate, and that of the Union—as the first was also a court of dernier resort; and the latter possessed no judicial power whatever.

Those considerations, together with the impracticability of devising any system, which in their opinion would be better, had induced them to recommend the constituting of the governor and senate the general appointing power. And they had given the exclusive right of nomination to the governor; this they thought very necessary, and the only way in which that would fix a responsibility for the appointments to be made; and because they were all convinced that the alteration which had been made to the constitution in 1801, had proved injurious, and such they firmly believed, was now the opinion of the people of this state.

He was not very sanguine that they had adopted the best, and wisest system that could be devised. It was very possible they might be mistaken in their views.

They had given to the Convention the result of their deliberations, to be disposed of as they should think proper. It would be arrogance in them to presume that their judgment on this subject was infallible, or that their report was free from great imperfection—he would say for himself, and from the good sense and good feeling which had characterised the conduct of the committee, he knew he could say for them also, that if any plan should be proposed by others, which would better subserve the public interest, it would receive their cheerful and sincere support.

Having, then, came to the determination to place the general appointing power in the governor, by and with the advice and consent of the senate; the next question to be settled was, what appointments should be conferred upon it.

The committee, he said, had all agreed, that the highest military officers should receive their appointments from this source, though some were of the opinion that these might safely be entrusted with the executive alone, as commander in chief. They had *all* united in the opinion, that all judicial officers, except surrogates and justices of the peace, ought also to be appointed in this way; two members of the committee were in favour of having the surrogates elected by the people.

With respect to that section of the report, which provides for the election of justices of the peace by the people, a great contrariety of sentiment had existed among them. Neither that section, nor the next, which provided for the appointment of certain officers in the city of New-York, had received his assent.

He had, at every stage of the discussions before the committee, been decidedly opposed to the election of justices; and it had been to him a source of sincere regret, that in that respect, he had been overruled by the committee. Only four of the committee had agreed to the section making justices elective, and one of that number had consented to it, rather for the sake of agreeing upon something to report, than from a conviction of the propriety of the mode recommended. He would, he said, here observe, that the two sections just mentioned were the only parts of the report, of any moment, from which he had dissented. A minority of the committee, however, thought they had not gone far enough in curtailing the patronage of the general appointing power, and were for including sheriffs and surrogates; in this he had differed from them. His reasons, therefore, it would be more proper for him to give when these respective subjects should come under discussion in that committee. He would now content himself with stating, that the majority of the select committee, had not, on the question respecting sheriffs and surrogates, nor on that relating

to justices of the peace, any strong personal predilections. They feel themselves entirely open to conviction on these, and on all other points, which might be raised respecting their report; and if, on a fair and deliberate examination, it should be thought that it would be better to have the sheriffs and surrogates elected by the people, they would cheerfully acquiesce in that decision.

Having now, in a very brief manner, detailed the conduct and views of the select committee, with respect to the appointment and election of officers, he would next submit a few remarks on the subject of the tenure and duration of the several offices. The select committee, he said, had supposed that it would be well to give the militia themselves, the power of electing their officers—this course was pursued in several of the states, and it was understood, had proved beneficial. But the nature of the power to be exercised by these officers, and the necessity of enforcing discipline, and preserving a due subordination in the privates, would require that they should, when once elected, be placed beyond their further control. They thought moreover, that there was something peculiarly improper in subjecting the commissions of militia officers, in any degree, to the fluctuations of party; and they had, therefore, recommended, that they should not be removed except by a court martial, or by the senate, on the recommendation of the governor, and even then, that the governor should state the reasons for requesting the removals.

The committee were also of the opinion, that it was injurious to a due and regular administration of justice, that judicial officers, who did not hold during good behaviour, should be at all times subject to removal at pleasure and without cause; and as had hitherto been the practice, to be changed with every fluctuation of party; this instability in the administration of justice, was calculated to do permanent and serious injury to the best interests of the state. They believe they have laid the axe to the root of this evil, by rendering it necessary, that no removals should take place but for causes publicly assigned, and this they believe, would be an effectual check, to prevent their being made on mere party grounds. It would not, in their opinion, answer to go farther than this; for if they required a regular trial on all complaints, the whole time of the senate would be consumed with these investigations.

With respect to the officers, to be appointed by the legislature, and the clerks of courts, they had thought, that they might with safety, be left to be removable at the pleasure of those from whom they received their appointments.

I have now, added Mr. Van Buren, given a succinct account of the reasonings, and inducements, which governed the select committee, in making the report, they have presented to the Convention; the subject had occupied much of their serious attention, and deliberation, and all had but served to convince them, of the many and great difficulties, with which it was incumbered; and had also prepared them to look for, and expect, a great difference of opinion, among the members of the Convention, with respect to the several parts of their report. But as they were not by any means, wedded to the system they had presented, and entertaining a hope, that the wisdom of the Convention, would be able to devise something, in part, at least, less objectionable, they had endeavoured to keep their own minds, entirely open for the adoption of any alteration, or modification, which might be offered, and which should appear to them, to be better calculated to advance the public interest.

Gen. Root said the first section was objectionable for two reasons. 1st, it provides, that the non-commissioned officers shall be appointed by the captain. There are ten of these officers to each company; and the selections are to be made from those who elect the officer that is to make the appointments. This would open a door for intrigue; and the old distich would be realized,

"Tickle me, Billy, do, do, do,
And in my turn I'll tickle you."

It would, in his opinion, be much better, that the non-commissioned officers should be elected by the companies.

The 2d objection was, that boys are permitted to vote. It was an established rule in all other cases, that minors should be excluded from the privilege of voting, and he saw no reason why an exception to the rule should be made

in this instance. We had often been told, in the course of our proceedings, that taxation and representation should go hand in hand. Minors are not taxed, and therefore should not vote. They are under the control of their parents, guardians, or masters ; and if fined, the parent, guardian, or master, as the case may be, is responsible for the fine. The minor does not, therefore, act for himself, and if he should be invested with the privilege of voting, he would be subject to the intrigue, influence, and control of others. He hoped this section would be amended by providing that the non-commissioned officers should be elected by the companies, and that none except those who are above the age of twenty-one shall be entitled to vote.

Mr. Van Buren was not tenacious on this subject, but thought this limitation of age would have a tendency to repress ambition, and to occasion difficulty and inequality in the mode of evidence by which the age of the minor should be tested. If they are eligible to office, it would seem proper that they should be permitted to vote ; and experience had shewn, in the eastern states, that they had often made very valuable officers.

After a debate somewhat colloquial, the section was modified, amended, and carried in the following words :—

" Captains, subalterns and non-commissioned officers (shall be appointed) by the written votes of the members of their respective companies."

Mr. Van Buren moved to insert the words " and separate battalions"—after the word " regiment" in the first line of the second section, and also at the close of the same. Carried.

The second section was then passed, as amended in the following words—" Field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions."

The subsequent sections after considerable discussion relative to the settlement of their respective details, were finally passed in the manner following :—

Sect. III. Brigadier generals by the respective officers of their respective brigades.

Sect. IV. Major generals, brigadier generals, and commanding officers of regiments or separate battalions, to appoint the staff officers of their respective divisions, brigades, and regiments, or separate battalions.

Sect. V. The governor to nominate, and by and with the advice and consent of the senate, to appoint, all major generals.

Sec. VI. The adjutant general to be appointed by the governor.

Sect. VII. That it should be made the duty of the legislature, to direct, by law, the time and manner of electing militia officers, and of certifying the officers elected, to the governor.

Sect. VIII. That in case the electors of captains, subalterns, or field officers of brigades, regiments or separate battalions, shall neglect or refuse to make such election, after being notified according to law, the governor shall appoint suitable persons to fill the vacancies thus occasioned.

Sect. IX. That all commissioned officers of militia be commissioned by the governor.

Sect. X. That the governor shall have power to fill up all vacancies in militia offices, the appointment of which is vested in the governor and senate, happening during the recess of the senate, by granting commissions which shall expire at the end of the next session of the legislature.

Sect. XI. That no officer duly commissioned to command in the militia, shall be removed from his office, but by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court martial pursuant to law.

Sect. XII. That the commissions of the present officers of the militia be no otherwise affected by these amendments, than to subject those holding them to removal in the manner above provided.

Sect. XIII. That in case the mode of election and appointment of militia officers now directed, shall not, after a full and fair experiment, be found conducive to the improvement of the militia, it shall be lawful for the legislature to abolish the same and to provide by law for their appointment and removal : *Provided* two thirds of the members present in each house shall concur therein.

CIVIL OFFICERS.

The first section was read as reported by the committee in the following words:

1st. The secretary of state, comptroller, treasurer, surveyor-general, and commissary general, to be appointed as follows, to wit:—The senate and assembly shall each openly nominate one person for the said offices respectively, after which nominations, they shall meet together, and if on comparing their respective nominations they shall be found to agree, the person so designated shall be deemed appointed to the office for which he is nominated—if they disagree, the appointment shall be made by the joint ballot of the senators and members of assembly, so met together as aforesaid.

Mr. Jay moved to strike out the words, "commissary general," on the ground that he was a military officer.

Gen. Root opposed the motion. He thought that those who have the custody of public property and the disbursement of public monies should be appointed by, and amenable to, the legislature.

The question was then taken on Mr. Jay's motion and lost.

Gen. Root moved to insert the words "attorney general"—next after the word *Treasurer*.

Mr. Bacon opposed the motion. The attorney general was always a political character, and he wished to remove the appointing power as far from the legislature as was practicable.

Chancellor Kent wished to confine the several departments to their appropriate duties. The attorney general was an executive officer, and his appointment should emanate from the executive department.

Gen. Tallmadge also opposed the motion, which was then put and lost.

Chief Justice Spencer moved to strike out the words "secretary of state."

After some discussion, in which Mr. Spencer supported, and Mr. Van Buren opposed the motion, the question was taken and carried.

Gen. Tallmadge then moved to strike out the word "comptroller." The duties of that officer were connected with the treasury. The comptroller and treasurer should be checks upon each other, and therefore ought not to be dependant for their offices on the same power.

Mr. E. Williams opposed the motion. The comptroller, he said, was the efficient treasurer. On his warrant the treasurer was bound to disburse the public monies. The comptroller has now the power that the treasurer had, at the formation of the constitution. The office of the latter was rather ministerial than otherwise.

A few additional remarks were made by Messrs. Fairlie, Tallmadge, Spencer and Van Buren, when the question was taken and lost.

Mr. Fairlie moved to strike out the word "treasurer." Lost.

Mr. Spencer moved to strike out the words "surveyor general." Lost.

Mr. Van Buren moved to insert the words "secretary of state,' next before the words "attorney general." Carried.

Gen. Tallmadge moved to strike out the words "by and with the advice and consent of the senate."

His object was to try the important question, whether the legislature should be connected with the general or supreme appointing power.

He said he made the motion with no querulous disposition, nor with the view of leading to any personal remark or reference to the existing council of appointment. And should the committee of the whole think with him, that it was expedient to sever the legislature entirely from the appointing power, it would probably be necessary to send back the subject to a select committee, for the purpose of devising a substitute.

The great principle is, that the legislature shall have no other important duties to call away their attention from the performance of their legitimate functions. Mr. T. was aware of the supposed analogy to the constitution of the United States. It would be remembered, however, that the extent of territory over which those offices were to be scattered, was so great, and so disconnected,

that no local or individual excitement could reach them; but no man could say the same of this state, who was acquainted with the history of our lobby. Here the door was opened for contracts and combinations, which will force and blend themselves with the concerns of legislation. The same unity of design and action which could be brought to bear on our senate, could not approach that of the senate of the United States, on account of its more extended scale of operation.

But there was another reason for the motion. The great objection to the present council, consists in its irresponsibility. But surely that responsibility would be greatly diminished, when divided among thirty-two persons instead of four, as the council of appointment now exists. By referring this power to the senate, the expenses of the government would also be greatly increased by the necessary procrastination of the legislative sessions.

But there was another objection to connecting the senate with the appointing power, still more important. We have now extended the elective franchise so far as to amount substantially to universal suffrage, and the senate would be the offspring of this wide-spread vote. It is expected to retain the power of a court of errors to give construction to our laws. Shall those, then, who construe the laws, be also the fountain of official appointment to those who execute them? Might not a suitor in that court of dernier resort, under cover of making interest for a friend in the obtainment of an office, introduce the subject of his cause, and thus essentially obtain an *ex parte* hearing and decision? Does it not open an avenue by which an improper approach may be made to the highest tribunal in the state? It has been imputed to our elections, that they have been made with a special reference to official appointments: and there is great reason to fear that should this motion be defeated, the same imputations may still be made, and the appropriate duties of the legislators be lost sight of in the more interesting exercise of the appointing power.

Mr. Van Buren remarked, that the section of the report under consideration was doubtless liable, in a greater or less degree, to the objections of the honourable gentleman from Dutchess, (Mr. Tallmadge) except that he did not think that the session of the legislature would be necessarily protracted by imparting this power to the senate. But he thought that if gentlemen were opposed to the report, it was incumbent upon them to offer a distinct substitute, so as not only to move to *strike out*, but also *to insert*. The gentleman who would offer a better substitute, should receive, not only his thanks, but his support.

Mr. Buel thought there was a wide distinction between the character of the powers vested in the members of the existing council of appointment, and of those which it is contemplated to give to the senate. Each member of the existing council has a positive power of nomination—an original appointing power. But the report contemplates clothing the senate with an *approving* power only. That body cannot, by their united force, appoint a single officer in the government. Of course the responsibility, instead of being diffused among thirty-two, is concentrated in the governor, and rests on him alone. And hence, also, if there is any bargaining, it will not be in the lobby of the senate, but in the mansion of the governor.

Perhaps the most forcible objection consists in its alledged connection with the judiciary power. This objection becomes less formidable when it is recollected, that the committee on the judiciary department have proposed in their report, that the court of errors shall not hold their sittings at the same time with the legislature. Another provision may also be introduced, that no appointment shall be made during the session of the court of errors.

It has been objected that the contemplated provision would increase expense, by protracting the session of the legislature. The mere confirmation of the nominations of the governor could take but little time, and experience has shewn that the senate is always in advance of the assembly in the transaction of business.

Mr. Van Buren rose merely to call the attention of the committee to the fact that the whole number of offices contemplated to be appointed under this section, after the diminutions proposed, could not exceed sixty—probably not over fifty.

Chief Justice Spencer asked whether the mover intended merely to strike out, and leave this power solely to the governor ?

Gen. Tallmadge said that such was not his intention, and yet it would be necessary, if his motion prevailed, that a distinct provision should be made, which could not be done by insertion—and hence he had suggested a recommitment to a select committee.

Mr. T. was aware that the power of the senate was only confirmatory ; but still he thought it presented too many and too great opportunities for intrigue and bargaining. Give me my bank, and I will give you your sheriff, was a language that might be held in the depository of the appointing power. Although its present operation might be convenient, he feared it would be ruinous in its future consequences.

Mr. King. This proposition stands in connexion with other parts of the report. The military offices are disposed of; and those reserved to the supreme appointing power, though few in number, are important in their character and station. The committee have assured us of the difficulties in the way of a perfect system, and have presented this as the best they were able to offer. It would seem, then, that those gentlemen who are dissatisfied with it, should accompany their objections with substitutes.

Experience goes to show, that to deposit this great power and patronage in the executive only, would be unsafe. The example of the great state of Pennsylvania proves that it would be impolitic. [Mr. T. explained, and said that such was not his intention.]

As it now stands, the governor is to have the exclusive nomination of these officers, and the whole power of the senate is of a negative character.

In the experience of the senate of the United States, which is in analogy with this provision, the sole, uncontrolled and exclusive power of nomination, is in the President. When his nomination comes before the senate, they never inquire into the comparative merits of the person nominated, or whether a better man could not have been found. They only inquire whether there is evidence of his positive disqualification : for no member of that body can expect, by objecting to the person named, to introduce his friend in his stead. This shows that where there is only an approving power, there can be no danger of a combination, for it would be without a motive. It would be impracticable : certainly unless your governor was too much enfeebled by the short tenure of his office, to resist the weight of improper influence. If he suspected a combination, he would be bound as a man of honour to break it up ; and when known in the senate that combinations could not be effectual, they would cease to be formed. The power proposed to be confided to the senate is only as a check to the indiscretion of the governor. The responsibility rests on him alone, and until a better plan was devised, he should support and approve of this.

Mr. Bacon was in favour of the section as reported, principally on the ground of the small number of offices that were confided to this supreme appointing power.

Mr. Rhinelander. As a member of the select committee to which this subject was referred, I would solicit your patience while I make a few remarks, in order to explain, as briefly as may be in my power, the principles upon which I acted in concurring with that part of the report which is now under consideration. I consider the governor and senate, organized as the general appointing power of the state, on the same plan as the president and senate of the United States are organized for a similar purpose under the general government, to constitute a safe depository of that important power, and at the same time one that is well calculated to promote the substantial interests of the state, by the assurance which it holds out of the exercise of discretion and integrity in the selection of proper persons to fill the offices of government. When I declare, however, that I consider the governor and senate a safe depository of the appointing power, I am led to express this sentiment, not because I think that in their hands this power will be incapable of abuse, that they may not abuse it, but because I much believe that in all human probability it seldom will be abused. because in all human probability it cannot often be abused with impunity. It is the individual responsibility of the governor, for every nomination as well as every appointment to office, upon which I depend, as a sufficient security

against the improper exercise of this power. The power of nominating to office being entrusted to the governor alone, it follows that no person can be appointed by the governor and senate, unless such person shall have been previously selected for the purpose by the governor, and consequently that the whole responsibility of every improper appointment must rest with him alone; for although the senate may refuse their assent to the appointment of a competent individual nominated by the governor, they cannot appoint an incompetent person unless such person shall have been previously recommended by the governor's nomination. This trust of selecting proper persons to fill the public offices being confided to the governor alone, it necessarily becomes an important part of his official duty, to inform himself in regard to the requisite qualifications of the several offices at his disposal, and also how far these qualifications may be possessed by any individual, before he may venture to recommend him to the senate as competent to perform the duties of the office to which he is to be nominated. And he must be considered a delinquent in the discharge of his official duty, whenever an appointment is made, that is at variance with the public interests. The senate indeed by their interference may save the state from the inconveniences that would result from the appointment, but the fidelity with which their part of the trust is executed, cannot be considered any palliation of the governor's delinquency. It is alone his duty to procure faithful and competent public officers, and if in any instance he neglects to nominate, or nominates improvidently, or improperly, in any respect whatever, he cannot screen himself from public censure by alleging a concurrent duty on the part of the senate, or even a duty on their part to investigate the characters of those whom he may nominate, for although undoubtedly it belongs to them to make this investigation in regard to every nomination, yet their responsibility in this respect is distinct from that of the governor, his official character being committed on the nomination; and there is no way in which he can cast off this responsibility, or bring in the senate to share it with him. The governor being able so far to control appointments to office, that no improper appointment can be made which did not originate in his nomination. If the people are at any time dissatisfied with the manner in which the duties of the public offices are performed, they can be at no loss where to attach their censure, nor at any loss how to apply an efficient remedy, when at the expiration of the executive term, the governor shall become again a candidate for their suffrages. This individual and indivisible responsibility which is attached to the governor, his distinct and inevitable accountability to the people for every abuse of this power of which he may be guilty, and the efficient means possessed by them to correct such abuse—these considerations are sufficiently satisfactory to my mind in establishing the safety of this investment of the appointing power.

I have equal confidence, Mr. Chairman, in the advantages that are to be derived, from the adoption of this proposition, in the judicious selection of public officers. The power of nomination being confined to the governor, and he being thereby rendered responsible, and censurable for every improper appointment that may be made,—in strict justice the merit of every judicious appointment must be attributable to him alone. And hence evidently there must be excited the strongest inducement on his part to perform this duty with ability and with satisfaction to the community, because in no other manner can the character of his administration be made so apparent and so intelligible to the people, as in the discharge of this trust of filling the offices of government. There is the strongest reliance to be placed upon the assiduity with which he will apply himself to the faithful performance of this duty of his office, because it affords him the fairest opportunity of exhibiting *himself* as it were to the people, in the character of his appointments; and of making such an impression upon public sentiment, as may be warranted by the ability and fidelity with which the duties of the respective offices are performed. However, sir, notwithstanding there must always exist this evident and powerful inducement to exercise the power of appointment beneficially to the public, yet I am aware that occasions may occur, when private feeling in favour of friends and family connexions, may excite a counteracting influence sufficiently powerful to induce a compromise of the public interests, even at the risk of losing some portion of public favour

and confidence. But then it is to be considered that it is the power of nomination only which is possessed by the governor, and that if at any time he should permit himself to be swayed by any sinister influence in making a nomination to the senate, that such nomination cannot become an appointment, and have power to operate upon the public interests, until it shall have received the assent and sanction of that body. And the mere conviction in the mind of the governor, that the character and motives of all his nominations are to be subjected to the scrutiny of the senate, must at all times have a powerful operation in restraining him within the just limits of his authority, and in repelling any undue influence. The senate, too, being composed of members whose residences are scattered through the several districts of the state, must always be presumed to possess within itself, the most ample means of ascertaining the true character of every nomination that is made. The senators themselves being rendered incapable of holding any office at the disposal of the general appointing power, there can be no adequate inducement on their part to combine with the governor to pervert the power of appointment to improper uses; and independently of such combination, it is hardly possible that they should fail to detect and expose every impropriety that may be connected with any nomination that is made to them. Thus it is made the duty of the governor alone to select proper persons to fill the public offices; and he alone is responsible to the people for the manner in which these selections are made; at the same time these selections are to be subjected to the scrutiny of the senate, which, besides that it must inevitably render the governor more diligent and cautious in performing the duty of nomination, must also afford further opportunity of investigating the character of the individuals nominated. But, sir, there is a further consideration in relation to this subject; and one which in my mind goes to the whole merits of the proposition. The duty of nomination being attached to the governor alone, it necessarily devolves upon him alone, to ascertain what individuals may be competent to perform the duties of the respective offices; and it is the very basis of the whole arranagement, that his official character should be committed on every nomination.

Now, sir, in order to obtain such information, as must be indispensable to the faithful discharge of this duty, much inquiry may frequently be necessary, and on some occasions, a good deal of subsequent deliberation;—and it becomes a matter of serious reflection and of difficult calculation, to determine to what extent this duty may be required of the executive, without trespassing upon the other duties of his office, and without imposing upon him a heavier responsibility than he may reasonably be presumed able to bear. It is important in establishing the duties of public officers, as well as in assigning the duties of private agents, when you would hold them responsible for the full and faithful discharge of such duties, that the amount of duty assigned should not exceed what may reasonably be presumed to be the capacity of the officer or agent to perform; otherwise, the evident impossibility of performing the whole duty well, very readily furnishes an apology for performing any part of it ill. If, therefore, on this principle, we place at the disposal of the governor and senate, a greater number of offices than in the exercise of sound discretion, the governor alone can procure competent persons to occupy,—if we impose upon him, in this respect, a more extensive duty than in strict justice we can expect him to perform,—in the same proportion in which the amount of these duties may exceed what may be presumed to be a reasonable capacity in the governor to perform them,—in the same proportion we weaken our security against his abuses of the power, by affording him an evident opportunity to evade his responsibility. In order to hold the governor strictly responsible for every nomination that he may make to the senate, on which depends, in my mind, the merits of the plan suggested by the report, the duty of nomination should not be imposed upon him to a greater extent than he may reasonably be presumed able to act, in the performance of it, advisedly, deliberately, and in possession of every information that may be essential to a judicious and discreet nomination. For if, in many cases, he is compelled of necessity to depend upon information received from others, without leisure or opportunity to investigate its truth and correctness,—if he is compelled, of necessity, in many cases to act

hastily and unadvisedly, by the undue and unreasonable pressure of his official duties, he may allege such necessity, when it has not existed in fact, and under cover of those venial delinquencies, evade the responsibility, and escape the penalty of many gross and premedited abuses of his power. Therefore, sir, although I have the most unbounded confidence in the investment of the appointing power which is suggested by the report, yet I would be understood to make this declaration expressly with a reference to such a limitation of the power as may be within the reasonable capacity of the governor to exercise with sound discretion, at all times, and on all occasions, so that he may be held entirely responsible, and strictly accountable to the people for every nomination he may make.

Mr. Dodge presumed the gentleman from Dutchess, (Gen. Tallmadge) would not have made the motion to strike out, unless he intended to substitute another project. In order to give him time to digest and prepare some substitute, he moved that the committee of the whole rise and report. Carried; and the Convention adjourned.

TUESDAY, OCTOBER 2, 1821.

No Chaplain being present, the President assumed the chair at 9 o'clock, when the journals of yesterday were read and approved.

Mr. Ross moved for the consideration of the amendment to the rules and orders of the house, which he yesterday offered, the object of which was, to change the course of proceedings, so as in no case to take the ayes and noes, when in the committee of the whole. On the suggestion of Mr. Spencer, for cause assigned, the motion was withdrawn.

THE APPOINTING POWER.

On motion of Mr. Van Buren, the Convention then resolved itself into a committee of the whole on the unfinished business of yesterday—Mr. Lawrence in the chair.

The second section of that part of the report relating to the appointment of civil officers, was read, and the chairman stated that Mr. Tallmadge's motion to strike out the words "*by and with the advice and consent of the senate*," was before the committee.

Mr. N. Williams disapproved of the order in which this subject was taken up—the first part of it should have been last. He was not prepared to say where the appointing power should be lodged, until he knew the nature and extent of its powers. It had been suggested that sheriffs ought to be elected by the people; and it had also been mentioned out of the Convention, if not on the floor, that justices of the peace ought not to be elected, but created by the appointing power. It would make a wide difference whether the appointing power was located in the senate, or some other body. He hoped the gentleman who moved the amendment now before the committee, would consent to withdraw it, that some other part of the report might first be taken up. Should the gentleman from Dutchess assent to this course, he should himself make a motion.

Gen. Tallmadge assented, and

Mr. Williams thereupon moved to strike out the words at the close of the second section, "*except justices of the peace*," which would, as he said, leave their appointment to the general appointing power. He then proceeded to state, that it was a proposition assented to by all, that government was instituted for the good of the people, and like the sun, its benign influence ought to be felt in every part of the system. We ought to extend the principles of freedom to the utmost boundaries of the body politic; but at the same time to beware of doing any thing to excite a popular phrenzy. Of all the measures proposed in this Convention, I consider, sir, this one, of *electing* the magistrates of our towns, as fraught with the greatest mischief. It involves a principle the

most pernicious to the peace of the community, and the most destructive to an orderly and correct course of justice. What, sir, elect your judges! For although some may think these magistrates of little consequence in society, I am of a very different opinion, and consider them of as much consequence in many respects, as any of the judges. And it may even be asserted that it would be safer and better to elect by the people, the justices of the supreme court, than the justices of the towns, by which you will eternise faction in every village and hamlet in the state. The judges of the supreme court are looked up to by the people of all grades, with great respect and veneration; and their residence and their decisions would be viewed as matters distant from the scenes of the election. But how would it be with your justices of towns? They would be engaged on the very spot where they reside, and would have to exercise their power in a contest with their constituents and neighbours, for an office which would give a controling influence over the reputation, liberty, and property of their very neighbours. Would such a contention be soon forgotten by even the most upright and virtuous magistrate? Would he be able to eradicate from his mind that his friends and his foes had been engaged, hand to hand, and foot to foot, in the contest?

But, sir, I would ask gentlemen to take another view of the subject. These judges in the several towns, are not only to adjudicate among their constituents when arrayed against each other, but as arrayed against the people of other towns and counties in the state. It cannot be expected that human nature in these magistrates would be so far elevated above all influence of this sort, that it would not be to be feared. Much less can this be expected, when we have so recently been told that some of the judicial officers, who fill the high stations of the supreme court, have been suspected of being influenced by their too warm interference in party politics.

I have said, sir, that the powers of these magistrates are very great: it is much greater than is generally imagined, and greater than they themselves are generally aware of. They have criminal jurisdiction to a very great extent. They can call any of their fellow-citizens, however high their standing, before them, for any offence whatever, on the accusation of any single individual, and whatever may be the risk of character or liberty. They can alone try some offences, and, associated with their fellows, can try, in a summary way, many misdemeanors. And indeed all prosecutions for offences of every name and nature, may be commenced before them. Then, sir, look at their civil power. Having jurisdiction of civil causes to the amount of fifty dollars, and having power to enter judgment in cases not litigated to the amount of one hundred dollars, they draw within the focus of their courts a greater amount of property than all the other courts in the state. In this point of view, it must be admitted, that they are the most important set of magistrates in the state; and it must be admitted also, that they would be able to put in motion a numerous and fearful corps of pettifoggers and retainers to secure their election. And it cannot be concealed, that, in some towns and villages, a single individual might be found, who would have a controling influence in the election of these officers.

I venture to assert, sir, that there is not to be found in the world, except in two instances in this country, a state or kingdom, in which this principle has been adopted. Having looked carefully into the constitutions of these United States, I am happy in being able to say, that Georgia and Ohio are the only states which have this pernicious plan in their constitutions: neither of which, when we take a survey of their judicial systems, and the state of their laws, shall we be solicitous to imitate. In the latter state, I have been informed, and have no doubt, that the people, I mean the more reflecting portion, are anxious to change the system. It need not astonish any one to be informed of the fact, that under such a system of justice, sap-troughs and basswood rails, are a tender upon executions, at the appraisal of men. Nor indeed will any one complain, that a judgment, induced by judges elected by the people, should be satisfied by such commodities.

It has been said, sir, I know, and there is great plausibility in the assertion, that the town officers generally, and especially the supervisors, all elected by the people, are very well selected. In general, the supervisors are men of in-

tegrity, and the board is highly respectable. But it ought to be remembered that this office excites very little interest in the community, as there is very little profit or power attached to it; and indeed, nothing is required of such an officer but integrity and economy, and he has not much to do but to reduce the accounts exhibited against the county as much as possible—say one-fourth or one-third. The election of such an officer will always be judicious, and excite very little commotion. We may say the same of the other officers of the town.

Upon the whole, I am bound to disapprove of this part of the report, considering it, as I do, very pernicious in principle, though in other respects the committee have presented us a very excellent plan. Let us strike out this provision, and then we shall be ready to act upon the appointing power with a full knowledge of what it is to perform. If these two or three thousand officers are to be thrown upon the senate, possibly it may occupy too much of their time and attention. But at any rate, I hope, sir, most anxiously, that this motion will prevail, and that some mode more salutary may be devised for the appointment of justices.

JUDGE PLATT said he had great respect for his honourable colleague, who had moved this amendment; but he considered it premature. By retaining these words, "excepting justices of the peace," we should decide this, and this only, that the justices of the peace should not be appointed by the governor and senate. The next question which will arise, will be, what power shall appoint justices of the peace? It appeared to him, notwithstanding the arguments which had been urged with so much force, that this question ought to be postponed till we come to the fifth section, which provides expressly for electing the justices. He suggested the propriety of withdrawing the motion, that he might have an opportunity of introducing a substitute, which would supersede the entire clause.

MR. WILLIAMS consented to suspend his motion, when Mr. Platt read in his place the following substitute :—

Strike out the second section of the original report on the Appointing Power, relative to civil officers, and insert the following, to wit:

I. The governor shall nominate, by message, in writing, and by and with the advice and consent of the senate, shall appoint, the chancellor, chief justice, and justices of the supreme court, the first judge of each county, the secretary of state, the attorney general, and all judicial officers, hereafter to be created, whose tenure of office shall be that of good behaviour.

II. There shall be a council of appointment for each county, except the counties of New-York and Albany, to consist of nine members, to be chosen for the term of three years, by the electors in each county, qualified to vote for members of assembly, &c. The members of said council to be divided into three classes; to the end, that three members may be elected annually; which council shall appoint the county judges, excepting the first judge, the sheriff, coroners, commissioners for taking proof or acknowledgment of deeds, and auctioneers.—All officers so to be appointed, shall be removable by the council of appointment for the county: Provided, that no judge shall be removed from office, except for cause particularly assigned on the minutes of the council; nor until notice be given him of the charge against him, and an opportunity of being heard in his defence. The minutes of the council of appointment in each county, shall be subscribed by the members of the council, shewing the vote of each member on every appointment and removal; and the said minutes shall be published yearly, in such manner as the legislature shall direct: And no member of the council shall be appointed to any office by the board of which he is a member, during the term for which he shall be elected; nor shall he be eligible to any elective office, whilst he continues to be a member of said council.

JUDGE PLATT continued his remarks, and said he had read with great satisfaction the report of the select committee; they were entitled to the commendation and thanks of the Convention. The articles of the report met his hearty approbation; but with regard to this section, he thought it contained one strong feature that would be dangerous in its operation. He meant that part which

conferred on the governor and senate the appointing power in regard to county officers. We all feel, and deplore, the evils which have resulted from the council of appointment as it now exists, and we have unanimously agreed to abolish it. He therefore thought the committee had erred in recommending that so large a portion of the appointing power should be given to the governor and senate. They are allowed to appoint all state officers, and to that alone he would confine their appointing power. You confer on the governor and senate an enormous power by giving to them the appointment of judges, sheriffs, and coroners, and indirectly, county clerks and district attorneys: which they cannot exercise discreetly for want of personal knowledge of the innumerable applicants for office. He thought if the provisions recommended in the report were adopted, we should gain little by abolishing the old council of appointment—we should make the matter worse instead of better. There were upwards of fifty counties in the state; and there would be more than two hundred judges, fifty or sixty sheriffs, three hundred coroners, twelve hundred commissioners for proving deeds, besides many others, appointed by the governor and senate. This immense patronage would endanger the purity of the senate, would minister to party violence, and would distract and degrade the state. It would be found worse, he thought, than the old council, inasmuch as the senate are more numerous than the council. He feared we deceived ourselves, if we supposed the appointing power would be exercised here as in the general government. There is in fact no similarity between the standing of the president of the United States, and the governor of this state, in relation to the senate. He feared, that instead of an independent nomination, dictated by his own judgment, and founded on his own responsibility, the appointing power would in practice degenerate into the mere result of previous consultations in the governor's closet, between him and his leading friends in the senate. He will seldom send a nomination until he is assured that it will be ratified. He may sometimes send a nomination with a previous understanding that it is to be rejected, so as to afford him a screen, and enable him with impunity afterwards to nominate a favourite whom he knows the senate will approve. My fear is, that the senate will generally dictate the nominations, especially if this general appointing power is to be extended to the county officers. My object is, to divide and distribute the power and patronage of conferring offices, so that no large portion of that power shall be deposited in any one body of men. Where the carcass is, there we know the foul birds of prey will gather round it. The union of so large an appointing power with the legislative and judicial functions of the senate, will tend to corrupt the highest fountain of justice and the purest source of legislation—It would entail upon the state the pestiferous influence which characterized the old council of appointment.

My proposition is, to carry home to each county the power of appointing every county officer except the first judge, where the candidates, and those who appoint them, may and will be personally known to each other. Whether justices of the peace shall be elected in the towns, or shall be appointed by the council of appointment for the county, is a point on which I am not tenacious; it may, in my judgment, be safely done in either of those modes. Whether the justices be elected by the people or be appointed by this council, I propose they should be removable (for cause shown) by the court of common pleas, as recommended in the report of the select committee.

By choosing only three of the members yearly we shall give more stability and moderation to the council than if the whole body were liable to change at any one election.

My objection to conferring this appointing power on the board of supervisors is, first, that it would tend to convert that virtuous and respectable class of officers into a band of political agents. Hitherto their power has extended merely to the liquidation of accounts, and the apportioning of taxes; they have wielded no political power. But if they were to dispense the officers of the county, they would be elected with a sole view to that part of their duty; and we might expect to see the most violent instrument of party chosen in almost every town.

Secondly, I object to the board of supervisors as the appointing power in the

county ; because the representation of the people would be very *unequal.* Some towns have 1000 voters, and some not more than 100 : and it is not to be endured, that the small towns shall have an equal voice in all appointments with the large towns. It would certainly be unjust, and would not be satisfactory. If my proposition be accepted, the representation would be exactly equal. We should then choose three members of the council every year, when we choose our members of assembly. They would probably have occasion to meet but once or twice a year: and what, in my view, constitutes a high recommendation, they would have no other public duties to perform. With this general introduction, I offer the substitute which I have read. It will be seen that the county clerk, the district attorney, and the surrogate, are not named in my proposition. The reason is, because the report of the select committee proposes that the clerk and district attorney be appointed by the judges of the common pleas ; and that the powers of the surrogate be given to the first judge. This, in my judgment, is proper. But if that part of the report shall not be agreed to, then I would propose to include those three important officers in the general class to be appointed by the council of appointment for the county.

Mr. N. Williams said, however much he felt disposed to consult the wishes of his honourable colleague, he could not consent to withdraw his amendment, so long as this odious feature remained in the report.

Mr. Van Buren hoped, after the explanation which he should give, the gentleman from Oneida (Mr. Platt,) would withdraw his motion for the present. He was not certain that the appointing power might not receive a better shape, than it now had in the report of the select committee.

Mr. Sharpe was disposed to vote for the proposition of the gentleman from Oneida, but if judges and sheriffs were added, he should oppose it.

Mr. Briggs said the honourable gentleman from Oneida had offered a substitute—admit it to be a substitute, sir. Now, if any gentleman likes the name of substitute better than that of amendment, he could see no difficulty in it. If any gentleman preferred the term amendment, let him vote for it—he could see no difficulty in it.

Mr. Yates thought that if the proposition was considered as a substitute, an amendment to it would be in order ; but an amendment to an amendment, would not be in order.

Col. Young was apprehensive we should fall into the same embarrassments we had experienced a few days since.

Judge Platt, to remove all difficulty, would consent to move to strike out and insert.

After a few remarks from Mr. Wendover,

Mr. Dodge proposed to pass over the 2d, 3d, 4th, and 5th sections, with the view that the proposition of the gentleman from Oneida might be printed. The amendment was complicated, and the subject too important to be passed over without deliberation. He therefore moved, that it be printed and laid on the table.

Mr. Van Buren was opposed to passing over these sections.

Mr. Russell was in favour of the motion of the gentleman from Montgomery (Mr. Dodge)—he had himself to propose a substitute for the appointing power.

Mr. King would submit to the consideration of the committee, whether it was not necessary to proceed according to the order of the business before the house ; and to decide on what is to be conceded to the appointing power, before we decide who are to constitute that power. Take it the other way, and there is the same difficulty. He thought the Convention should endeavour to progress with the business before them as fast as possible.

Mr. Birdseye apprehended there would be some difficulty in accepting the proposition of the gentleman from Oneida (Mr. Platt,) as a substitute. It appeared to him that it would be better to take it piecemeal, in the form of amendments ; that the part relating to the governor and senate should first be taken up—then that part relative to sheriffs---and the other parts in their order. In that way, the subject would be better understood.

Judge Platt called for the reading of the first clause.

Col. Young thought the course proposed by the gentleman from Onondaga (Mr. Birdseye) was the only true course. Every gentleman who had heard the proposition of the gentleman from Oneida, must consider it a substitute, and if accepted, it would again render the business before the committee complicated. We were wasting time by receiving long substitutes—the report should be made the substratum, and the amendments to it, regularly built upon it.

Mr. Buel remarked, that if the substitute of the gentleman from Oneida were received, it would supersede a discussion of those parts of the report, which would be displaced by it.

Mr. Briggs conceived it was wholly immaterial, whether we call the proposition a substitute or an amendment.

Judge Platt thought it would be better to have his proposition offered as a substitute, than as an amendment, since gentlemen would then be better able to view it in connexion; otherwise they would not be able to see the relation of the several parts.

Mr. Wheeler moved to try the sense of the committee on the substitute.

Gen. Root inquired in what situation the committee would be, if the substitute should be accepted.

Judge Van Ness thought it would be better to decide in the first place, the great question, where the appointing power should be located.

Col. Young agreed with the gentleman from Columbia, (Judge Van Ness,) and believed it would be better to take the sense of the house, on the leading question first.

Judge Platt was in favour of the governor's nominating to the senate by message, and moved accordingly.

Mr. King made a few remarks in favour of the motion. Carried.

Judge Platt moved to strike out the words "*by and with the advice*"—so as to make the provision read, "shall nominate and appoint with the consent of the senate." It is useless to retain these words, as the governor is to nominate by message, and will hold no personal consultation with the senate. Carried.

Mr. Russell then proposed the following as an amendment.

Strike out the whole of the second section, of the original report, on the appointing power, and insert the following:

I. There shall be a council of appointment for the state, consisting of the governor and six councillors, who shall be constituted in the manner following, viz:

II. That the state shall be divided into six equal council districts, according to the population thereof: and that as often as a governor is elected, the electors of the said districts respectively, shall choose one councillor, who, together with the governor, shall form the council of appointment for this state, for the term for which the governor shall be elected; and who shall appoint all officers, not otherwise directed by this constitution.

III. That the said council shall meet on the first Monday of December, in every year, at the seat of government.

IV. That the governor shall be *ex-officio* president of the said council, and shall have an exclusive right to nominate all state officers, but shall have but a casting vote in the council.

V. That each councillor shall have the exclusive right to nominate all officers, whose powers are to be exercised within the district for which he shall have been elected: That the Secretary of the State, for the time being, shall be the Secretary of the said Council, and record the doings of the same; and all the nominations and proceedings thereof shall be published.

VI. That the said councillors shall hold no other office under the United States, or state government, and that they shall receive, as a compensation for their services, the same sum for wages and travelling, as is allowed by law to the members of the legislature. The governor may convene the council, whenever he may think the public good requires it except when the legislature are in session.

Mr. Dodge renewed his motion to rise and report, in order to have the several propositions printed.

Mr. Van Buren hoped the committee would not rise, as there would be no business immediately before the Convention.

Mr. Dodge thought the committee had better adjourn, and have the several amendments printed, than to pass any important provision hastily and unadvisedly.

Chief Justice Spencer said, the substitute of the gentleman from Erie was the ghost of the old council of appointment—it was the same hideous monster in a different shape. He had believed that the old council had become so odious that no one would attempt to retain any of its features. We had passed upon it unanimously—public sentiment was equally strong and decided against it, and he regretted to see any thing similar to it brought forward.

Mr. Russell remarked, that if his proposition was the ghost of the old council, it was very unlike it in its features. He went into an explanation of its principles, drew a comparison between his plan and the old council, and pointed out the decided advantages of the former.

Col. Young said the proposition struck him more favourably than any thing he had heard on the subject. He confessed that his mind was nearly balanced, and he was in doubt how the appointing power could be disposed of. He wished the gentleman from Albany (Mr. Spencer) to assign some reasons why the appointing power should be given to the governor and senate.

The Chief Justice remarked, that if the gentleman from Saratoga (Col. Young) had yesterday been in his seat, he would have heard the subject fully discussed by gentlemen more competent than himself, and he thought a repetition of the arguments at this time unnecessary.

Mr. King was opposed to the practice into which we had fallen, of postponing every thing from day to day. We had already been together long enough, and the public would become weary of our tardy progress, and endless procrastinations.

Mr. Russell again urged the consideration of his substitute. He could not concur with the gentleman from Queens, (Mr. King) in thinking that so much time had been uselessly spent by the Convention. In his opinion, the substitute offered by him should be printed. He apprehended the gentleman from Queens did not himself fully understand the subject.

Mr. Burroughs drew a parallel between the substitute and the old council. There was little similarity between them. He hoped the substitute would be printed, and time given for discussion.

Gen. Root thought the whole subject was properly under consideration, and he should, therefore, make a few general remarks relative to the section. He was in favour of placing all judicial officers on the same footing, so far as it respected their creation. He thought there was more safety in electing the chancellor and judges of the supreme court by the people, than the justices of the peace. They were altogether less liable to improper influence from the power that created them.

The proposition of the gentleman from Erie, (Mr. Russell) had been scouted as preposterous. Some gentlemen were one day afraid of the people—another day they were haunted with ghosts and spectres. He ardently hoped that the day was not far distant, when the liberty of the people would indeed arise " redeemed, regenerated, and disenthralled by the genius of universal emancipation." And what, he asked, had destroyed the life of that council of appointment, whose perturbed spirit now wakened in some bosoms such anxious alarms? Why had it become unpopular in its advance to its grave? It was because its powers had been abused. In its theory it was good, nor had it become unpopular until a tyrannic dictation interfered with the free exercise of its legitimate powers. But when it was driven by dictation, or seduced by the arts of blandishment, to subserve improper purposes, it became like the scathed oak—a disastrous shelter from the storm. Under the baneful influence of " an organized and disciplined corps," it is no wonder that it should have been abandoned by the wise and the good. Jaded to death by " extraneous influence" and worn down by fatigue, it was at last turned out upon the common, unpitied and forlorn, and left to die upon the barren waste.

But, sir, it has not been dictation and seduction alone that have caused this premature dissolution. In the course of its progress, salaries became exorbitant; and it was not the "foul birds" only, but the towering eagles, that flew to the carcass. Its obesity was inviting, and the mighty ones of the land partook of the banquet. He hoped, therefore, that those who had fed upon its dainties would not be frightened by its ghost. Believing, as he did, that the proposition before the committee contained but few of its features, it would be entitled to his consideration, and perhaps to his support.

Mr. Edwards observed, that it would probably be made manifest in the progress of the business of the Convention, both to this house and to the state, who were the persons that were most willing to confide in the people. I took occasion, on a former day, he observed, to express my opinion that the people were alike in their views and honest in their purpose, and that *my* republicanism was of a *practical* character. The crisis has now arrived in which professions and principles are to be tested by *acts*. To that test I advance with the fearless confidence of an advocate of the real and substantial rights of the people.

One prominent and strong feature of opposition, cannot have escaped the attention of any person who hears me—that all measures have been opposed that do not point to the concentration of the appointing power in the city of Albany. I wish to be relieved from the necessity of making such remarks; but I must speak now, or for ever hereafter hold my peace. And I shall speak the honest conviction of my heart, whoever may be included in its range, or whoever may be affected by its censure.

It is a lamentable fact, that while other states move on with tranquillity, the state of New-York, torn by factions and dissensions, although the keystone of the arch that binds the union, has lost its power, and reduced its influence. And what had been the grand cause of this reduction of influence and limitation of power? It was the corruption that had infused itself into all the veins and arteries of the government. More iniquity had been practised in our legislative hall, than in perhaps all the other states in the union. How, then, should this sore upon the body politic be healed? The unanimous vote of this committee had shown that the council of appointment was an evil. An unanimous sentence of condemnation has been passed upon it. He had not expected so soon to find a proposition for its revival. In this expectation he was disappointed, by the motion of the gentleman from Erie.

By the abolition of the old council it had been proposed to attain three grand objects: 1. the tranquillity of the state; 2. a preservation of the purity of the legislative body; and 3. the security of good and satisfactory appointments to office.

Mr. E. then entered upon a minute and elaborate examination of the subject, to prove that neither of the propositions presented were adequate to the purposes for which a supreme appointing power should be created. He maintained that the right of suffrage should first be placed in discreet and proper hands, and that nothing was then to be feared from the people in the exercise of their rights. They had never abused their powers. He strongly protested against any proposition that should bring back to Albany the appointment and distribution of the high offices of the government; and entered at large upon the propriety of electing the justices of the peace by the people. He deemed it essential to the security of the rights of the people, and to the peace and tranquillity of the state, that the appointing power should be removed from the precincts of the capitol. Return it to the power from whence it emanated, and we might safely calculate upon the blessings of a good government for our children, when their fathers should be laid in the dust.

Mr. Ross replied to Mr. Edwards.

Mr. King asked the committee to indulge him in making a few observations, for the purpose of comparing the amendment with the report of the select committee. It was not quite obvious why a new council of appointment should now be proposed, if the reasons for the unanimous abolition of the old one, were not egregiously misunderstood. It has been said, and without being controverted on any side, that the existence of the old council at the seat of govern-

ment, brought together at this place, a numerous body of office seekers, and an experienced corps of men, employed in the procuring and distribution of offices; whereby not only the proper duties of the council were corruptly neglected, but the business of the legislature was often misdirected, and made subservient to the bad views which guided the suitors who assembled here.

After the unanimous decision as to the impolicy and danger of this system, how is it that another council should be recommended? If all we have heard be true, there must be something which is kept back, something to excuse the past, or to justify the plan now offered; light and information beyond what are communicated, are reasonably desired.

How is the new council to be distinguished from the old one, if the old council was pernicious? What reason have we to believe that the new one will be beneficial! The old one consists of five members—the new one will consist of seven—Will the increase of numbers give safety? In all the great offices of state the governor is to nominate, and with the consent of the council, to appoint. In respect to the local, district, county, or town officers, each member of the council are to nominate for their respective districts. Will they not be liable to pursue, and in fact, will they not adopt the same disgraceful course as their predecessors? They, also, are to convene as their predecessors did, at the seat of government, where they may be approached in like manner, and influenced by similar motives. If, as we hear it stated, the justices of the peace, amounting to two thousand five hundred magistrates, adjudicate on more property annually than all the judges, including the chancellor, this branch of the appointments is in itself of the highest consequence, and the just and impartial selection of these men, of the greatest concern to the welfare of the people.

Each of these justices employs his constables or marshals, and is attended by the small lawyers who excite and sustain the suits which are tried before the justices. There being on an average four justices in each town, the justices, the constables, the suitors, the pettifoggers, and the idle attendants, make together a great collection of the people. Indeed, so important is this magistracy and its associates in this state, that it has been said in relation to their offices, that he who can control or dispose of their appointments, would possess greater political influence, than were he able to dispose of all the other offices throughout the state.

How, after our experience of the mal administration of the old council, and our conviction of the enormous and dangerous power of a corrupt appointment of this body of magistrates, can we, with fidelity to the people, consent to establish a new council of appointment in the same place, and open to the same temptations and corruptions as are ascribed to the old council?

What is the plan of the report of the select committee? What is public expectation on this point? Does any one suppose that the same accumulation of appointments is to occur at the seat of government? Certainly not. It is recommended by the committee that a few offices, such as comptroller and treasurer should be made by law—that the great judiciary and other analogous state officers should be made by the nomination of the governor, with the consent of the senate; and it is the public hope, that the great, the numerous mass of officers, including justices of the peace, should be distributed through the counties and towns, and their appointments made by a body that should be free from influence, and competent to the important trust. Whether this should be done by election, or in the mode proposed by the member from Oneida, (Mr. Platt,) remains to be considered—but by carrying these appointments into the counties or smaller associations, the guilty practices which have prevailed at the seat of government will be broken up.

Some inconvenience may, in particular scenes, be experienced; but these will be nothing in comparison with the vices which have been perpetrated elsewhere.

In lieu, therefore, of the proposed amendment, we are bound to prefer the report of the committee, which proposes to give to the legislature the appointment of a few persons entrusted with the custody and disbursement of the public money and the settlement of the public accounts; to confide to the governor and senate the appointment of the great judiciary, and a limited number of

other great state officers, and to restore to, and distribute among, the people, in the several counties, the appointment of the great mass of civil offices.

This system will ensure as much peace, and justice in the execution thereof, as we have any reasonable hope can be obtained.

Faction will thereby be discountenanced, honest men will be delivered from temptation, bad men will be driven from their evil practices, and the appointment of a most important portion of the magistracy will be confided to the towns and counties, which can more safely be trusted, than any central council that may be devised to execute this duty.

If this breaking up of the powers of the council, and the distribution of its innocent fragments among the people, are safe and desirable—is not the grant to the governor and senate, of the power to appoint the high judicial, and other great officers of state, equally so?

It is objected that the using of the senate as a check on the governor's nomination, confounds two great departments, and is therefore condemned by great authorities. May it not be answered, that the maxim which requires the separation of the executive and legislative departments, is misapplied in this instance? The maxim wisely prohibits the entire union of any two departments in one; but this is only making use of a branch of the legislature, and in a limited and not extensive manner, to check the executive, and does not fall within the spirit of the prohibition. It is not in this instance, but in another connexion—that of the legislative and judicial departments—that serious difficulties are to be encountered. The senate are not only an equal branch of the legislature, but they are to be constituted the supreme branch of the judiciary. This violates the maxim which has been named, and in itself, independently of the prohibition of the union of the great departments, is the subject of many doubts. The court that in the last resort is to re-examine and determine questions of law and equity, ought, we naturally conclude, to possess a sufficient knowledge of law and equity to perform this office; will this be matter of fact or of presumption?

But the model which the committee have followed, in calling in the senate to pass on the governor's nomination, is well known to us; and we have had such experience of the constitution of the United States in this respect, that considerable hope may be indulged that the plan will prove safe and beneficial in this state. The senate, it is apprehended, will form parties among themselves, and in connexion with the assemblymen, so to exercise the power given to them in the appointments, as to act over again the proceedings of the council of appointment. This, however, cannot happen, if the power of the governor is wisely and firmly exercised. The governor alone can nominate the person to be appointed—this will be done by written message. The senate can only consent to, or dissent from the nomination—in doing this, the only question will be, is the candidate nominated duly qualified? They are not to enquire whether a better man could not be found: this power is exclusively confided to the governor; they are to ascertain, not whether he is the best man, but whether he is a qualified man for the office. If he is so, they must consent: if not, dissent. Were the senate to conclude that another man is better qualified, and for this reason were they to negative the nomination, they have no means, and if the governor be an independent man, ought to have no hope, of success, because their object in this would be to deprive the governor of a power given to him. It is in this mode that the constitution of the United States is found to operate; the power of selection and nomination is cautiously exercised and maintained by the president; the senate confine their duty to an inquiry into the qualifications of the persons nominated to office—their comparative worth is laid out of the question; is he honest, is he intelligent, is he qualified for the office? If doubts on any of these points occur, they ask of the president information respecting the character and qualifications of the person nominated; this request produces the recommendations, and other information, on which the president has made the nomination, and these, together with such other information as the senate can obtain, enable them to decide on the nominated.

As the plan has worked well in the general government, may we not hope,

by an able governor and a virtuous and enlightened senate, each holding the other within their respective spheres, that the same system will also work well here?

Pursue the report of the committee; give a few monied appointments to the legislature;—impart the appointments of the great judicial and other state offices to the governor and senate:—you have already given to the militia the appointment of its officers, with a small, but important exception;—go on, and give to the counties and towns the appointment of the residue, being the great mass of appointments, which have heretofore created so much dissatisfaction and mischief throughout the state;—bring the question to a trial; can the people be trusted? are they the safe keepers of their own liberties?

As I mean what I profess, I am prepared to distribute the local appointments throughout the counties; and I feel confident that more peace and order, less intrigue, and a greater share of the good fruits expected from these appointments will be obtained in this, than in any other mode of appointment. On the immediate question, we are called upon, by our unanimous vote to abolish the council of appointment, to go forward; and instead of putting down one council in order to introduce what seems to me to be an equally, or more odious one, to break up, and distribute the enormous mass of appointments: and to confide to the governor and senate, the small number of them, that, from the nature of the offices, are of a general character.

I would prefer this plan to the proposed amendment, and am therefore against its adoption.

Col. Young supported the proposition of the gentleman from Erie (Mr. Russell) in a speech of considerable length, when on motion, the committee rose, reported, and obtained leave to sit again.

On motion of Gen. J. R. Van Rensselaer, the several propositions to-day offered were laid on the table, and ordered to be printed. Adjourned.

WEDNESDAY, OCTOBER 3, 1821.

The Convention assembled at the usual hour, and after prayers by the Rev. Mr. Mayer, the minutes of yesterday were then read and approved.

THE APPOINTING POWER.

On motion of Gen. Collins, the Convention resolved itself into a committee of the whole on the unfinished business of yesterday. Mr. Lawrence in the chair.

Chief Justice Spencer remarked, that he had yesterday, on the spur of the occasion, observed that he considered this proposition as the ghost of the old council of appointment. It was with no disposition to detract from the motives of the mover, or the merits of the proposition, that he had hazarded the observation: and perhaps it was due to his respectable and venerable friend, (Mr. Russell,) that he should retract it—especially so far as it was susceptible of any improper construction. It had come upon him by surprize; but although he would recall the expression he had used in relation to it, yet, he verily believed, that the proposition contained all the evils (and many more) of the old council of appointment.

Why had that council been abolished? Because it was not only badly organized in itself, but it had a tendency to keep the state in faction and collision. It would not, therefore, be a performance of the duty which the members of that body owed to themselves and to their constituents, if they did not eradicate, so far as was practicable, this poison from the body politic.

Three principal objections against the old council of appointment had obtained,—1st, its privacy; 2d, its irresponsibility: and 3dly, its tendency to afford aliment to party spirit, by the immense patronage it commanded.

The same combinations which were produced by the old council would, in the opinion of Mr. Spencer, be produced by the new one. The same privacy and irresponsibility would subsist, and the same party spirit would be fomented.

But this was worse than the old council.—When senators were chosen, they had been hitherto selected more for their fitness and competency in relation to other qualifications, than the appointing power; but under this system, they would be selected merely as they were the pliant tools of the intriguing persons who had elected them. And what man of honour, he would ask; what man, who regarded purity of conscience, or the value of an unspotted character, would accept the trust and office contemplated by this proposition? an office that must be beset from morn till eve with every sort of importunity and stratagem that cunning could suggest, or impudence could execute? What man of honour would assume a station, unrequited, that should disturb his repose, call down upon his head the maledictions of one half of the community, the contempt of a secondary portion, and only the cold thanks of the remainder? None but the factious: none but those who hold themselves so cheap in their own estimation, and in that of the public, as to be willing to become the slaves, and drudges, and panders of party, would ever condescend to accept so humiliated an employment. If it were the object (as he knew it could not be with the honourable mover) to perpetuate faction in the state, this, in his opinion, was the mode most perfectly calculated to retain and preserve it.

Mr. S. proceeded at some length in detail to point out the mischievous tendency of appointing justices of the peace by direct and immediate election by the people, which would grow out of the proposition of the honourable gentleman from Erie.

Mr. Russell. I did not anticipate, when I brought forward this motion, that I was about to agitate or alarm any members of this committee. My only object was, to introduce a substitute for the governor and senate. I was aware that there was a necessity that there should be a general appointing power. And in the proposition that this power should be lodged with the governor and senate, it is said that the responsibility will rest on the governor alone; but will it not rest also on six members of the proposed council? My object is to disconnect, entirely, the appointing power from the legislature, which I consider would be a great improvement in our political system. I wish to bring home as far as is practicable all appointments to the direction of the people.

Judge Van Ness wished further explanation, relative to the general and sweeping clause in the last sentence in the second section of the amendment. It would seem to include sheriffs and many other officers, who are not specifically designated.

Mr. Russell, replied.

Chancellor Kent was opposed to the proposition of the honourable member from Erie (Mr. Russell) because he considered it, in all essential respects, a restoration, with more exceptionable features of the old council of appointment, which had been abolished by the unanimous voice of the Convention. I would rather, he observed, repose the power of appointment in the governor and four senators, chosen annually by the assembly, than in the governor and six councillors, chosen in great districts, according to the scheme proposed, because the senators would be less likely to be unduly influenced, Their trust would be only incidental to other duties of a purer and graver character.

But the great and fundamental objection to this new, as well as to the old council, is, that it concentrates in one spot, and upon a small and not very responsible body, the whole action of the combined struggles and competition for office throughout the state. Such an action or power, operates with irresistible force, and no body like the one proposed could sustain it. It would inevitably lose its integrity or its independence. It would be guided by faction and assailed by corruption. We have tried the experiment in the old council, and we have seen and felt its mischiefs. The public voice has been loud and unanimous in the condemnation of such an institution, and in the necessity of a more general distribution and separation into distinct parcels, of the appointing power.

But he did not think it necessary to enter into a particular examination of the defects of this new plan. This task had already been ably performed. His object was to express his decided objection to any plan that placed the appointment of the local officers of the counties in one general and central power. How

these local officers were to be appointed within the counties, was a distinct question, not necessarily involved in the proposition for which he contended, and which was, that the power of appointment must be local. To select local magistrates with discretion, required local information. How could several thousand justices of the peace, dispersed in every town throughout this state, be well selected at the seat of government? The appointing power would be exposed to be continually misled by interested and designing individuals. It must, of necessity, rely wholly upon the information of others. A councillor representing one-sixth of the whole population of the state, according to the plan now before the committee, must be nearly as destitute of the requisite local information of characters, as a senator representing one-fourth of that population. There would be no material difference in the competency of these two officers to select with discretion. The local officers of the county must generally be selected at home, and this must either be by the people, or by some power to be created within the county. There is, upon the whole, less danger of abuse in that mode than in any that can be devised. It is, probably, the only way in which we may expect to collect the fair and honest sense of the people of each county, without disguise or imposition.

The great value of these local appointments is, that they weaken by dividing the force of party. They will break down the scheme of one great, uniform, organized system of party domination throughout the state, and they will give to the minor party in each county, some chance for some participation in the local affairs of the county. They will disperse a great deal of the aliment of party spirit, and diminish its action, and consequently its intensity and its bitterness at the seat of government. This consideration cannot be too deeply impressed upon the minds of the committee. The future happiness, and, I might almost say, the future destiny of the people of this state, turn upon such an arrangement.

What have we to fear in future? We have no reason to apprehend subjugation by foreign arms, nor conflicts between the states. We have no standing armies to menace our liberties. We have no hereditary aristocracy, nor privileged orders, nor established church to press upon our rights or our income: our liberties are to be assailed from other quarters and by other means. It is not to be disguised that our governments are becoming downright democracies, with all their good, and all their evil. The principle of universal suffrage, which is now running a triumphant career from Maine to Louisiana, is an awful power, which, like gunpowder, or the steam engine, or the press itself, may be rendered mighty in mischief as well as in blessings. We have to fear the corrupting influence of constant struggles for office and power. We have to fear inflammatory appeals to the worst passions of the worst men in society; and we have greatly to dread the disciplined force of fierce and vindictive majorities, headed by leaders flattering their weaknesses and passions, and turning their vengeance upon the heads and fortunes of minorities, under the forms of law. It requires all our wisdom, and all our patriotism, to surround our institutions with a rampart against the corruption and violence of party spirit. We must ingraft something like quarantine laws into our constitution, to prevent the introduction and rage of this great moral pestilence. If we do not, then, take my word for it, we may expect to encounter the same disasters which have corrupted and shaken to the foundation so many popular states. What we have already done, will, as I greatly fear, give a freer operation and an increased impetus to the power of the evil genius of democracy. I need not surely inform this wise assembly, that all unchecked democracies are better calculated for man as he ought to be, than for man as he is, and as he has always appeared to be in the faithful page of history, and as he is declared to be in the volume of divine inspiration.

I hope, sir, I do not press this subject too far. I believe in my conscience, that unless we remove the means of concentrating, at the seat of government, or at any other given place, the elements of faction and the struggles for office, and unless we scatter them in fragments among the counties, our future career will be exceedingly tempestuous and corrupt. I appeal to our own experience, and to the evidence of history for the grounds of my belief. I may refer to the

Roman Republic, to the numerous Italian Republics of the middle ages, to Geneva, to the Swiss cantons, to the commonwealth of England, and to the revolutions of the French republic, as monitory lessons on this subject. I think it is Cicero who considers the struggles between factions in republics as a more certain cause of their ruin than foreign wars, or famine, or pestilence, or other calamities of the like kind ; and Cicero had himself witnessed the last struggles of parties, and the dying agonies of the Roman republic. But why need I refer to ancient statesmen, when we have an authority at home of equal weight? It is admitted by General Hamilton in the *Federalist*, so often referred to in this house as a text book, that to secure the public good and private right against the enterprises of faction, was the great *desideratum*, the one thing needful, to rescue republican government from opprobrium, and recommend it to the esteem and adoption of mankind. We have, however, an authority still more commanding and more venerable, in the legacy left by the father of his country to the American people :

" The happiness of the people of the United States, may be made complete by so careful a preservation, and *so prudent a use of liberty*, as will recommend it to the applause, the affection, and adoption, of every other nation which is yet a stranger to it.

" You ought to resist, with care, the *spirit of innovation* upon the principles of the government, however specious the pretext.

" *Time and habit* are at least as necessary to fix the true character of governments, as of other human institutions. *Experience* is the surest standard by which to test the real tendency of the existing constitution of the country ; *facility in changes*, upon the credit of mere hypothesis and opinion, exposes to perpetual change from the endless variety of hypotheses and opinion.

" *Liberty is little else than a name*, where the government is too feeble to withstand the enterprises of faction, and to maintain all in the secure and tranquil enjoyment of the rights of person and property."

" The *spirit of party*, in popular governments, is seen in its greatest rankness, and is truly their worst enemy."

" The alternate dominion of *one faction* over another, sharpened by the spirit of revenge, natural to party dissension, which, in different ages and countries, has perpetuated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual ; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of public liberty."

" Without looking forward to an extremity of this kind, (which, nevertheless, ought not to be entirely out of sight,) the common and continual mischiefs of *the spirit of party* are sufficient to make it the interest and duty of a wise people to discourage and restrain it."

" In governments purely elective, *the spirit of party* is not to be encouraged. From their natural tendency, it is certain there will always be enough of this spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume."

These precepts and admonitions ought to sink deep into our minds. They come from one who taught like a sage, and who never flattered to betray. If ever a trust was calculated to inspire awe and diffidence, it is that which we have to perform. The present question on the power of appointment seems to have awakened much sensibility. Selfish views ought to be discarded. Neither anger nor distrust ought to be indulged. We ought to exercise moderation, and candour, and mutual forbearance, and good-heartedness towards each other. We ought to withdraw our thoughts from ourselves, and fix them on our posterity. The attention of the public is anxiously fixed upon us. We are the constant object of their hopes and their fears. Our ambition should be as elevated as the anticipated destiny of our country. We ought to wish that

this Convention may have no ephemeral reputation: we are all equally concerned in the result, and must share in the honour or the shame. Let us endeavour to raise our minds above the mists of narrow views, and selfish purposes, and temporary calculations, into some higher region of serenity and sunshine. Then may we hope that the spirit of wisdom will guide us. Then, indeed, *our ways will be ways of pleasantness, and all our paths be peace.*

Mr. Van Buren said, there was a variety of opinions as to the proper place for the depository of the appointing power. Those who advocated the propriety of placing it in the governor and senate, did not appear to be satisfied with the system which they advocated. He was anxious, before the question was decided, to remove their embarrassment by designating the extent of power which was to be confided to this or that body—it was therefore his intention to submit a distinct proposition; and before he proceeded to do that, he would remark, that he most cordially concurred in opinion with the honourable gentleman from Albany, (Mr. Kent) as to the importance of proceeding with harmony and good feeling. It had been to him a matter of surprize, that on a subject in which all were so deeply interested, and where individual interest could not be subserved, they should not be willing to preserve such feelings. A contrary course would undoubtedly have a direct tendency to weaken public confidence in the proceedings of the Convention; if not generally, it would in the minds of the more enlightened parts of the community.

It was not to be disguised, that that part of the report before the committee, relating to the appointment of justices of the peace, was by far the most important feature in the report—if that was settled, the remaining part of it would be got along with very easily. Some had thought these magistrates ought to be elected; but he had at all times been opposed to their election; and if he did not deceive himself, the force of the remarks of gentlemen in favour of their election, had excited doubts in the mind of every man, as to the propriety of such a measure. He concurred in the opinion which had been expressed as to the impropriety of electing the higher officers of state, because their duties were important; and it was to be feared that it would have a tendency to render their judgment subservient to their desire for a continuance in office. This was the principal argument which had been used. If there were other reasons he did not know what they were.

The amount of business before the justices of the peace in this state, was five times as great, as all the business before the other courts—on this point, it appeared to him there was no room for a diversity of opinion—the truth of this statement could be ascertained by a reference to their proceedings. They were equally important as it respected criminal justice.

As to the probable effect upon their independence, there is no room for a comparison. The judges of the supreme court are elected for a long term of time; should the people become dissatisfied, even whole counties, these officers might not feel the effects of their displeasure till after a long time had elapsed; but apply this to justices of the peace, who administer justice in the immediate presence of their constituents, and are exposed to the daily scrutiny of those upon whom they are dependant; who are cognisant of all they do; and have the power of passing judgment on them. If they are not satisfied with them, they must forfeit their offices.

What could the single arm of a chief magistrate of the state do towards suppressing a rebellion? It must be effected through the interposition of this inferior magistracy. He was willing to go as far as any man, in endeavouring to curtail dangerous patronage in distinct bodies of men; but he would not go so far as to cut every cord that binds together the people to the government.

It was at first thought advisable by the committee, to have them appointed by the court of common pleas; but on more mature deliberation, it was concluded that it would be making political engines of them, and therefore it was abandoned, and the principle adopted which is contained in the report now before the committee. There are different propositions before the committee, viz: for having them elective, for having them appointed by the governor and senate, and for having them appointed by the governor and a council of six.

Mr. V. B. said he would not pretend to raise any new argument, but apply those which had been urged with so much force by the gentleman from Albany, (Mr. Spencer) who had first spoken this morning. His first objection was, that these men who are to be chosen as a council, are to be chosen by corrupt and intriguing men, in their respective districts. If this be the case in these extensive districts, how much more so will it be in individual counties? And again, these men are to be elected by a party, and therefore represent that party; consequently, all their acts will be characterised by party views; and again, no decent man will undertake to perform a duty, which will be sure to lead him into difficulty.

Every man would be in favour of his friend, and would therefore give rise to all the hard feelings which have been so sorely felt in the method heretofore practised by our present council. We have had some experience on this subject—I think, therefore, we ought not to proceed without serious deliberation.

We have reported a project for the city of New-York, but we are informed that it does not meet with the approbation of that city; and is it reasonable to suppose that a similar plan would meet the feelings of the different counties?

Mr. V. B. would refer the committee, though with reluctance, to the proceedings of the past council of appointment—particularly to one act. During the last winter, apprehensions were abroad in this good city, that certain individuals would have too much influence in the council; and, to shut the door against this evil, the people took it into their own hands, called ward meetings to make arrangements for the selection of officers in the city; and it is known that it caused more difficulty than any other circumstance.

He did not believe it would be benefiting the people, to extinguish one great fire and enkindle fifty-two smaller ones. The further this power could be removed from the people, the better. He could not therefore consent to the proposition of the gentleman from Oneida, (Mr. Platt,) and would ask the liberty of submitting to the consideration of the committee a project of his own. He submitted it under a full conviction of its practical utility, although it might not go so far towards meeting the views of the gentleman from Albany as would be desirable. His proposition is this: "to amend the second section of the report, by adding thereto, at the conclusion of the same, the following words:

"Who shall be appointed in the manner following, viz:

"That the board of supervisors in every county in this state shall, once in every —— years, at such time as the legislature may direct, recommend to the governor a list of persons equal in number to the justices of the peace by law authorized to be appointed for said county; and the respective courts of common pleas of the several counties shall also recommend a list of the like number, and as often as any vacancies shall happen, the boards of supervisors and courts of common pleas of the counties in which such vacancies may happen, shall recommend lists of persons equal to the number of vacancies in such county; and from the lists so recommended, the governor shall appoint and commission the justices of the peace for the respective counties—that the said justices shall hold their offices for —— years, but may be removed by the governor on the address of the body which recommended their appointment, stating in writing the grounds of such removal."

This proposition, in the first place, meets the views of the gentlemen who are desirous of removing this power from the seat of government, as the nominations must originate in the counties.—No man will suppose that the governor will go into the different counties of the state to influence the nominations; he will merely have the right of discriminating between the individuals nominated in the counties where they reside. This, then, is the first advantage—the second will be, that the nominations will be respectable.

He could not agree in opinion with his honourable friend from Albany, as to the merits of the magistrates in this state; he considered them a very respectable body. The supervisors of a county, coming from the different towns in that county, will be acquainted with the merits of the individuals in

their respective towns—there will be a rivalship for the most respectable candidates; they will be selected for their respectability and responsibility; and instead of depending for favouritism on the executive, as has heretofore been the case under the former council, they will consider it their interest to send to the governor the most respectable names that they can select. The governor may obtain any additional information which he may require from the representatives of the people in the legislature. Should there be distinct parties in these counties, one in favour and the other opposed to the governor, from both of which candidates should be nominated, he would undoubtedly, knowing his own responsibility to the people, select from both political classes with due attention to their qualifications and standing in society. It is unreasonable and rash to suppose that he would be confined to one particular class, when an indulgence in such a course, must be at his own expense—he cannot do it from ignorance, or in the dark.

The judges of the common pleas will be anxious to recommend the safest and best men, as they will have frequent occasion to sit with them in criminal cases. These were a few of the advantages arising from the plan which he proposed, although gentlemen may say it does not answer the public expectation in bringing home to the doors of the people this power of appointment. It will be seen that out of fourteen thousand officers which were heretofore dependant on this general appointing power, about eight thousand militia officers have been taken and thrown home to the people, leaving but a small number dependant on this general appointing power. It has been said that military appointments never excited great interest; although it may be true in part, it is not to the full extent;—it has been carried so far that you could scarce meet a man who was not a colonel, whilst almost every man has felt a deep interest in the subject, either directly or indirectly. An attempt was once made in the senate of this state to vary the features of our militia system: it is well known that it excited great alarm. Instead of fourteen thousand appointments, there are now but six thousand to account for—three thousand are proposed to be provided for by the legislature as they may think proper—these are coroners, acknowledgers of deeds, examiners in chancery, &c. &c. leaving but about two thousand five hundred upon which the governor will have a right to discriminate. District attorneys, clerks of courts, mayors, and recorders, are already provided for, and are to be appointed by the courts and common councils. Compare the number of officers now under consideration with the number heretofore originating in the general power—it leaves but a small proportion.

Mr. Van Buren thereupon moved to pass over the second, third, and fourth sections of the report, in order to take up the fifth. A question of order arose thereupon, in which Messrs. Spencer, Young, Briggs, Burroughs, Sharpe, Van Ness, Buel, Tallmadge, N. Williams, and Dodge, took part; when the motion for postponement was put and lost.

Whereupon a debate ensued upon the motion of Mr. Russell, (inserted in the proceedings of yesterday,) which was discussed by Messrs. Root, Briggs, Spencer, Young, Sheldon, Russell, Tompkins, Wheeler, and Fairlie.

Gen. Brooks also observed, that it was with no small degree of embarrassment that he should offer his opinion on this important subject. In the formation of the appointing power, much depends upon the extent of that power, as to its particular organization. It was his choice to give to the people a part of the appointing power, leaving to the governor and senate the appointment of those denominated state officers. But from the sentiments recently expressed from various parts of this house, it seems that the people are not to be trusted with this power, and are considered incapable of exercising it. If such were the feelings of this committee, he should be compelled to vote somewhat against his inclinations. The amendment offered by the honourable gentleman from Erie, (Mr. Russell,) proposes the establishment of a council of appointment for the state. There are other propositions to create councils of appointment in each of the counties of this state. Mr. B. preferred the one proposed by the gentleman from Erie. The probable result seemed to be, that a consolidated appointing power for civil offices, would be established, either in a council of

appointment, or in the governor and senate: and odious as is the term council of appointment, he should give it his vote rather than contaminate the legislative body, and involve them in all the whirlpools of party strife which have heretofore agitated this state.

It was his desire that some of the smaller offices may yet be given to the people; still there is little hope of removing the evils we suffer in this course. The purity of our legislative body seems to be the only alternative.

It was with much pleasure that he perceived in the report of the committee on the legislative department, the principle introduced of divesting the members of future legislatures of all lucrative offices. He hoped that that principle would prevail. A legislature thus pure, and freed from pecuniary considerations of this sort, would, in justice to itself and to the people of this state, reduce the fees and salaries of the officers, which far exceed those of any other state in the union, and, as he believed, of any other government on earth. This being done, peace and harmony would be restored to the people of the state.

Mr. Cramer said, that neither of the plans before the committee were satisfactory to him; but he should prefer that of the gentleman from Erie, (Mr. Russell.) He was not afraid of the ghost of the old council of appointment. Let those stand aghast who had led the way to its destruction. He was in favour of a council of appointment in a proper shape; but if gentlemen were in favour of the Georgia system, he hoped they would be consistent, and adopt it in full. He was not to be frightened by the language of the gentleman from Queens. He wished to see all judiciary officers on one footing, and to see them independent. He considered the functions of a justice of the peace as important as those of any other class of officers in the state.

This subject had been discussed when it was not before the house. A gentleman from New-York (Mr. Edwards) had addressed the house three times, and had delivered nearly the same speech each time. But nobody, as he could learn, understood his speech after all, and he would propose that the gentleman get up and deliver it over again, that they might, if possible, ascertain what he would be at. It had been deemed important that a council should be provided for the city of New-York, but little care was taken for the country. He was for determining, in the first place, who should be appointed by this power. The gentleman from New-York (Mr. E.) finds fault with every system, and yet points out nothing. He should vote for the proposition of the gentleman from Erie.

Mr. Edwards. In answer to the observations of the gentleman from Saratoga, (Mr. Cramer,) I have but one remark to make. Perhaps I ought to beg pardon of the Convention for taking any notice of his highly indecorous speech. It is true, sir, that I have upon three different occasions expressed my sentiments very freely upon the subject of undue influences and of the fraud and corruption which have prevailed in consequence of the appointing power being centred in Albany. I made no personal allusions to any gentleman. There appears, however, to have been something in those remarks, which has crossed the sensibilities of the gentleman very unpleasantly; and he appears to have imagined that he was personally alluded to. If the gentleman will take these remarks to himself, I cannot help it. If the cap fits, let him wear it. Sancho Panza used to say, that if it rained mitres, he should never be able to find one which would fit his head. The honourable gentleman from Saratoga is more fortunate. Every cap appears to fit him; and he seems to imagine that it was made on purpose for him.

Mr. Dodge. There are evils in every system which has been introduced, and our only anxiety should be to select that one which shall embrace the most advantages with the fewest defects:

Nothing could be more beautiful in theory than the formation of the old council of appointment—The members of assembly, chosen annually by the people, selected each year from the body of senators who are chosen once in four years, one senator to represent each of the four great districts of the state—these four senators together with the governor, formed the council of appointment, which we yesterday, by an unanimous vote agreed to abolish.

Our ancestors in framing the constitution, justly supposed that the system

would be a safe, a sure, and pure system, which would secure to their successors the blessings which inevitably follow from having our offices filled by men of character, talents, and integrity.

But what has been the result, and what character has experience stamped upon the proceedings of the old council. The members of the legislature interfered in the proceedings of the council; they became candidates for every office in its gift; they elected the council with this view, and to further their own private ends. Members of the council have interfered with the legislature, and procured the passage of laws, and incorporated banks against the interest and wishes of the people; and to further their own private views, and the engine that procured these votes, and the passage of these laws, was the council. The scenes I allude to, are fresh in the memory of every member of this committee —Thus we see this system so pure in theory, has, in practice, degenerated, and every species of corruption is carried on under its banners.

But, Mr. Chairman, the system of the gentleman from Erie, (Col. Russell) at present under debate, is still more objectionable.

It is in substance the old council, with two additional members, and with all its frailties.

It would give rise to party spirit, strife, and contention, in every district in the state—Intrigue and corruption would exist throughout—each member of the council would be elected for eight or nine counties. He could not possibly be acquainted with the candidates from the different parts of his district—he would be imposed on by the designing, the corrupt, and the selfish from every quarter—he would not be responsible. The senator in the old council, had his character of senator at stake, his standing in society; he was elected for other purposes, and with other views, and his office of member of the council, was only incidental to his other duties; but in this case, he is elected for the sole purpose, and has no other responsibility whatever—This patronage is great; he has by this amendment of the gentleman from Erie, a right to nominate all the officers of his district; this would amount to hundreds of thousands of dollars, and what security have we against his being bribed and corrupted—we have heard of such things in our legislature, and how much more likely would this irresponsible member of the council be to commit the same crime.

The proposition of the gentleman from Oneida, (Mr. Platt) is liable to every one of the above objections, though on a smaller scale, and with this additional one, that it would tend to increase party spirit, dissensions, and divisions in the community, in a much greater degree.

Let us now for one moment, Mr. Chairman, examine the system reported by the committee of which Mr. Van Buren was chairman. This report gives the sole nomination to the governor, by and with the advice of the senate. To separate the legislative, the executive, and judicial departments of government, appears to be the wish of all.

The governor has by this report the sole power of nominating; there could be, therefore, no legislative connivance—none of that species of corruption could possibly exist—the members of the senate could not know, (unless privately consulted) who was to be nominated, and their opinions on legislative matters would not be influenced thereby. The members of the senate have only the approval or disapproval—they are thirty-two in number, and there could be no use, and scarcely a possibility of corrupting them.

The members of our legislature, are, by a provision in the constitution, debarred from accepting any office whatever; they could not, then, as formerly, return to their constituents loaded with every valuable office.

Upon the whole, Mr. Chairman, I am convinced, that as it is necessary this appointing power should exist somewhere, that there are fewer evils to be apprehended from this system, than any one I have heard suggested, and inasmuch as the character of the governor is necessarily connected with the nominations and appointments he shall make, and I consider him responsible to the people for every one of them, and as we elect him annually, we can confidently rely on a faithful discharge of his arduous duties, and I feel a perfect conviction that the report of the committee affords the best system, and it shall receive my vote.

Mr. Ross. Mr. Chairman, permit me to ask the indulgence of the committee a few minutes, whilst I notice some of the singular views and representations just submitted by the gentleman from New-York, (Mr. Edwards.) He appears to be labouring to excite alarms, by imputing to the advocates of this amendment, sentiments I have heard no one yet advance, and I will venture to say, no one entertains.

In relation to the general appointing power, it would seem to be inferred from his arguments, that if it was made elective by the people in districts, as proposed by the amendment offered by the gentleman from Erie, (Mr. Russell,) all the officers heretofore appointed by the present council, would be lodged in the hands of this new appointing power. I have heard no such wish or intention expressed, nor do I believe any such sentiment to exist among the supporters of this amendment. On the contrary, the necessity of distributing the power of appointments as much as possible, has been urged by all, at least in every part of the house where any opinions have been expressed. I cannot hesitate to declare my entire and settled conviction, that a distribution of this power, is both wise and expedient. To accomplish this object, many of the officers heretofore appointed, should be made elective. Military, and all local ministerial officers, such as county clerks, commissioners for taking acknowledgments, &c. ought by all means to be elected by the people whom they are to serve.

But, sir, when gentlemen (Messrs. Spencer and Edwards) urge the propriety of electing judicial officers, such as magistrates, and tell us too that the people call for it, it seems impossible that they should be sincere. That effects, the most pernicious and detrimental to the public welfare, would flow from making any judicial officers elective, particularly magistrates, I think must be manifest to all. Independently of the agitations, management and strife, incident to such elections, and which will be sufficient to deter sober, discreet men, from entering into competitions to obtain the office, it will destroy all confidence in the independence and impartiality of our magistrates.

Wherever these elections are contested, as they will be, the candidates cannot help but know who have opposed, as well as those who have advocated their election. In this respect, they are altogether more unpleasantly situated than judicial officers of a higher grade, were they to be made elective. During the heat of elections, it would be natural that many unfriendly tales and aspersions would be told, and set afloat to prevent the election of candidates, who might notwithstanding be successful. I ask, would not the magistrate, in deciding on the rights and interests of his friends and opponents, thus situated, be liable to be warped by prejudice? It would be scarcely possible for some men to avoid it. It is human nature to be more or less influenced by such considerations. Electing men to the office of justice of the peace, would not exempt them from the frailties of our nature, nor would it insure the selection of men of such an elevated cast of mind, as to look with indifference to the anxiety of a political friend. If I mistake not, it would oftener lead to a selection of an opposite description.

Supposing the magistrate to be the most honest man living, he would not be in a situation to exercise his cool unbiassed judgment. He would be constantly exposed to the imputation of partiality, to avoid which, and to guard against the bias of his own feelings, he might even prejudice the rights of his friend, while one of an opposite character, or of strong passions, might do great injustice to his opponent when called upon to decide between parties thus situated. The office of justice of the peace is not of trifling importance, for under the present increased jurisdiction those offices adjudicate upon a greater amount of property, in the aggregate, than all other courts in the state.—Hence the importance of preserving a confidence in their decisions.—Otherwise we lay the foundation for multiplying appeals, and perhaps of ultimately cutting off entirely their civil jurisdiction. To some engaged in the law, this might be a desirable state of things, but to all other classes of citizens, it would be disastrous. In most cases a small majority, and even a minority in many instances of a single town, would elect magistrates to serve the people of a whole county. This, sir, is a principle novel and unsound—because it entirely departs from

the representative system, by creating officers to exercise jurisdiction over us, without our consent, directly or indirectly, and over whom we have no control. Besides, sir, the common sense of the American people, as well as of all other countries, has decided against the correctness of this mode of creating judicial officers. If they have not so decided, and so much good would result from this mode as is pretended, why is it not every where adopted? Why is it left for Ohio and one other state to furnish the only solitary examples? It is well known, too, that in these instances the people would be glad to change it for any other mode. But, says the gentleman from New-York, (Mr. Edwards,) it is not only just and right in principle, but the people have called for it. Sir, as far as I know their wishes, no such call has been made, unless it be some who expect to derive some sinister or political advantage at the expense of the public interest.

Notwithstanding I am opposed to the election of magistrates and all other judicial officers, yet it is certainly my wish, that a great proportion of the officers, both civil and military, that have been heretofore appointed, should be elected by the people, and which, I think, can be done with the utmost safety and convenience.

But after all, there must still be some general appointing power. This I believe is confessed by all. In whose hands then shall it be placed? I apprehend in none, so safely as in a council elected by the people, in districts, according to the scheme proposed by the gentleman from Erie, (Mr. Russell.)

I am aware that no plan can be devised, that will be entirely free from objections. But among the variety of projects submitted by different gentlemen, I am enclined to think this is liable to the fewest objections. The members chosen in this manner, come together possessing a general knowledge of their own districts, and will doubtless receive instructions from the people whom they represent, in relation to appointments fit and proper to be made. They will also be directly responsible to their constituents, for the faithful execution of the trust reposed in them. The provision requiring them to hold their sessions at a different time from that of the legislature, deserves the highest approbation, because the power of appointing to office, ought never to mingle with the business of legislation. Its connection has already produced much evil, and has furnished the true cause of complaint against the present council. Instead, sir, of this mode of appointment being objectionable, on the ground of expense, as has been urged, it has the decided preference to that of connecting it with either branch of the legislature, on the principle of economy.

But, sir, the unusual jealousies and fears manifested by gentlemen from New-York, with regard to having any appointments made here, and the great anxiety to cut off all connection and community of interest between the different counties, and the general appointing power, I apprehend will not lead to any useful results, if too much indulged. Whether certain men in, or out of Albany, have been in the habit of interfering too much with appointments, I shall not undertake to decide.

But should the amendment now submitted, be adopted, I think there would be very little danger of any improper interference, since the members thus elected, except the governor, are ineligible to any other office.

The question was then taken by ayes and noes, and decided in the negative as follows:

NOES—Messrs. Bacon, Barlow, Beckwith, Birdseye, Bowman, Breese, Briggs, Buel, Carver, Case, Child, R. Clarke, Clyde, Collins, Day, Dodge, Dubuis, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Fish, Frost, Hallock, Hees, Howe, Humphrey, Hunt, Hunter, Hunting, Huntington, Hurd. Jay, Jones, Kent, King, Knowles, A. Livingston, M'Call, Millikin, Moore, Munro, Nelson, Park, Paulding, Pike, Pitcher, Platt, Porter, Price, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rogers, Root, Rose, Rosebrugh, Sage, Sanders, N. Sanford, R. Sandford, Seaman, Seeley, Sharpe, I. Smith, R. Smith, Spencer, Stagg, Starkweather, Steele, D. Southerland, I. Sutherland, Swift, Sylvester, Tallmadge, Townley, Tuttle, Van Buren, Van Fleet, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Ward, E.

Webster, Wendover, Wheaton, Wheeler, E. Williams, N. Williams, Wood, Woodward, Yates, Young—108.

AYES—Messrs. Brooks, Burroughs, Cramer, Lansing, Lefferts, President, Russell, Sheldon, Taylor—9.

A question of order then ensued, when on motion of JUDGE VAN NESS, the committee proceeded to test the principle of constituting the governor (with the approving power of the senate) the general or supreme appointing power of the state, by dividing the section, so as to limit the question at the word "appoint;" whereupon the same was put and carried.

GEN. ROOT then moved to strike out the words "sheriffs," and after a discussion at some length, in which Messrs. Root, Van Ness, Briggs, Brooks, Van Buren, and Sharpe took part, the question was taken by ayes and noes, and decided in the affirmative by all the members present, excepting Messrs. Bowman and Paulding, who voted in the negative.

JUDGE PLATT then moved to insert, after the word "appoint," the following words, viz:

"The chancellor, chief justice, and justices of the supreme court, the first judge of each county, the secretary of state, the attorney general, and all judicial officers, hereafter to be created, whose tenure of office shall be that of good behaviour.

After a debate of some length between Messrs. Platt, Munro, Spencer, and Birdseye, Mr. Platt withdrew his motion, and suggested that he would introduce the proposition *seriatim*. He thereupon moved to insert next after the word "appoint," the words "the chancellor." Messrs. Root and Young opposed the motion, which was put and lost.

MR. VAN BUREN then moved specifically an adoption of the proposition he this morning had the honour to suggest in the course of his remarks on the proposition of the gentleman from Erie (Mr. Russell.) He wished those words added at the close of the second section.

MR. WENDOVER thereupon moved to amend the amendment of the honourable gentleman from Otsego, (Mr. Van Buren) by ingrafting upon it the following proposition;

"That the justices of the peace for each county, except the cities, be appointed by the judges of the county courts and the boards of supervisors in joint meeting —that the vote of each judge and supervisor present at any appointment, shall be recorded in their minutes, and copy thereof deposited in the office of the county clerk; and that no appointment of justice of the peace shall extend beyond three years."

Whereupon the question was taken upon the same and lost.

JUDGE PLATT opposed the amendment, on the ground that justices so to be appointed would not be responsible to the people, but would be the creatures and agents of the governor.—That the judges would necessarily relax from the stern dignity of their appropriate character, and become mere political machines in the hands of the executive.

In relation to the board of supervisors, he contended that their present high character had proceeded from their abstraction from political concerns, which their legitimate duties suggested, and would be lost and destroyed amid the tumults and agitations of party, which this amendment naturally invited. It would be injurious to the repose of that confidence in relation to town concerns which had hitherto subsisted; and above all, would operate with extreme inequality, inasmuch as each town in that board would have an equal vote, however unequal in information, wealth, or population.

COL YOUNG reported the amendment, and replied at considerable length to the objections which had been raised by the gentleman from Oneida, (Mr. Platt) when a motion was made to rise and report, which was carried.

In Convention, MR. WHEELER gave notice that he should propose to-morrow, that no division by ayes and noes should hereafter be made in committee of the whole, except upon a call of a majority of the members present. Adjourned.

THURSDAY, OCTOBER 4, 1821.

The Convention assembled at the usual hour; and after prayers by the Rev. Mr. Davis, the journal of yesterday was read and approved.

Col. Young, from the committee (of thirteen) to whom was referred the resolution relative to the right of suffrage, made the following report:—

I. Every male citizen of the age of twenty-one years, who shall have been one year an inhabitant of this state, preceding the day of the election, and for the last six months a resident of the town, county, or district, where he may offer his vote, and shall have been, within the next year preceding, assessed, and shall have actually paid a tax to the state or county, or shall be by law exempted from taxation: And also, every male citizen of the age of twenty-one years, who shall have been for three years next preceding such election, an inhabitant of this state, and for the last year, a resident in the town, county, or district where he may offer his vote, and shall have been, within the last year, assessed to labour upon the public highways, and shall have performed the labour, or paid an equivalent therefor, according to law, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people: *Provided,* That no male citizen, other than white, shall be subject to taxation, or entitled to vote at any election, unless, in addition to the qualifications of age and residence, last above mentioned, he shall be seised and possessed, in his own right, of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been, within the year next preceding the election, assessed, and shall have actually paid a tax to the state or county.

Chief Justice Spencer moved that the usual number of copies be printed for the use of the Convention, and that the same be referred to the committee of the whole, when on the report of the honourable Mr. Sanford. Agreed to.

THE APPOINTING POWER.

The Convention then resolved itself into a committee of the whole on the unfinished business of yesterday,—Mr. Lawrence in the chair.

Mr. Buel commenced the debate in support of the amendment of the honourable member from Otsego. (Mr. Van Buren.) He adverted to the different propositions before the committee, for appointing or electing justices of the peace. He said the mode recommended by the select committee of electing them, was very exceptionable. The gentlemen who constituted the committee to whom this subject was referred, were not all in favour of having them elected by the people. There was not, indeed, a majority. It appeared to him that this was the worst possible mode: it had been asked, and with emphasis too, why justices could not as well be elected as town clerks and supervisors? This question was scarcely entitled to an answer, as the duties of these officers bear no comparison with each other. The trust committed to supervisors was merely that of adjusting the monied concerns of the county, regulating taxes, and preserving a proper balance between the different towns of the county. His acts are not to operate on individuals, but on the whole including himself; there could be no possible inducement for intrigue in the procurement of that office; but in the election of a magistrate it is very different.

The justice of the peace is to exercise civil and criminal jurisdiction, and, in fact, he is the poor man's judge---he brings justice home to the doors of the people. He is the magistrate who puts all the laws in motion, by commencing all criminal prosecutions, and a very great proportion of civil; it is he who carries into effect the poor laws; and, in fact,his powers in the aggregate are enormous---they exceed all the other courts in the state.

It is considered an office of emolument, and is sought for on that account, almost exclusively, by some; this is not the case with the office of supervisor.

In the election of a justice of the peace, all kinds of intrigue would be used, and the man who had the most influence, and could set the most machinery in motion at the election, would most surely succeed in getting the appointment for himself or his friend. Offices obtained in this way would not be respectable, nor would the incumbents be suitable characters for the discharge of such

important duties as the administration of justice would require, in the neighbourhood where all this game had been played.

Is the mode proposed by the gentleman from Oneida desirable? He proposes having nine persons chosen in each county, to constitute a council of appointment.—It does appear to me, said Mr. B. that the arguments of the gentleman from Albany, (Mr. Spencer,) go most conclusively to show the pernicious effects which would result from the proposition of the gentleman from Oneida. This body of men is too numerous; it would be totally irresponsible, and therefore unfit to exercise this important power.

We have heard much said of the commotion at a governor's election. It must be admitted that it would be increased by adding that of a county election for a council of appointment—the people would all turn out in battle array—and for my part, I should much prefer the old council. The remark of the gentleman from Albany was just, that the situation of an elector would be truly odious.

We next come to the proposition of the gentleman from Otsego. In the first place, this proposition possesses one of the qualities so highly spoken of by the gentleman from Albany. It is an incidental duty, without enacting a new officer; and will not these nominating boards be as discreet as any body that you can appoint? It appears to me they will; and that they will possess the necessary independence of mind, and the necessary information respecting the personal qualifications of candidates for office. It is certainly a fair presumption, that the judges of the county court will be selected for their talents, integrity, and regard to the public good. It would be unfair to presume that they will not be men of character and good standing in society. I think I can see that since the number of the judges have been limited in the counties, the courts have become more respectable. I think they will still improve. The people are becoming convinced of the necessity of appointing men of worth and talents to that office. On the whole, I think we may safely conclude that the judges will possess the necessary independence, character, intelligence, and responsibility to be entrusted with the power of making nominations. They will be interested in making such as will be respectable, as the persons thus selected are to sit by their side in dispensing criminal justice; and I think it cannot create any additional expense.

I now come to consider the objections offered by the gentleman from Oneida. The first objection is, that it is an improper mixture of the different branches of the government—but it is no more than is to be found in many other respects. I ask whether it is a violation of any sound principle? What is this council? Is it in any way legislative, executive, or judicial? If the executive has any power, it is conferred on him by the people; and this power, as it relates to appointments, does not appear to me to be either of the three departments. In our government all offices proceed from the people, and as it is not convenient for them to manage this business personally, they are under the necessity of making agents, and they have a right to appoint agents to make other agents. There has been no difficulty arising from allowing the supreme court and court of chancery to appoint their own clerks, and this is an office of trust and honour.

The important question is, whether the plan proposed by the gentleman from Otsego will lead to corruption in the exercise of this power. What reasons have we to suppose this court of common pleas will be corrupted by the exercise of this power, any more than the other courts? Instances may occur when power will be abused, of whatever nature it may be. A chancellor may be a bad man, and abuse his power; but are we ever after to distrust all men? Experience on this subject is more satisfactory than all speculative views which can be taken. The proposition now before the committee is upon a principle adopted in one of the most respectable states in the Union, and was entitled to his cordial approbation and support.

Gen. Root was in favour of the proposition offered by the gentleman from Otsego, so far as it related to the appointment of justices of the peace; but the office of sheriff he was anxious to have elective: if the question on this proposition was carried, it would negative the fifth section of the report. The appoint-

ment of justices was one about which there was very little agitation: the supervisors would of course bring the views of their respective towns upon the subject of their magistrates. Every supervisor would have an opportunity of consulting his neighbour on the subject of justices; but with respect to sheriffs it would be different, as there would be but one in each county, and he would not be able to consult in the different towns in the county, and would probably bring forward a candidate in his own town. After their several recommendations, one must be selected, but not without much extraneous influence and bargaining. One would say, give me the sheriff in my town this time, and you shall have him in your town the next election. This would lead to serious difficulties, and would not be remedied by the interposition of the judges of the common pleas as they might have one candidate in view and the supervisors another; of course these candidates must take a trip to Albany either personally, or by their agents or friends, to see who can use the most influence with the governor. This is not a desirable state of things—suppose the supervisors and judges should by chance agree in the nomination of the same individual, the one who stood next on the list would also have to make a trip to see the governor.

Mr. R. said his object in moving to strike out the word sheriff, was to provide for their being elected by the people. Let them hold for a given time, and then make them ineligible for the next term—make them give ample security, and you will have men worthy of the office.

Gen. J. R. Van Rensselaer rose to take a view of the different propositions before the Convention, and their probable effect if adopted. The Convention, he said, had unanimously agreed in abolishing the old council of appointment, from a conviction of its evil consequences and a knowledge of the desire of the people to try some other method of selecting and appointing officers. The people had for a long time been aware, that the appointments under our former council had been dictated by a few individuals at the seat of government, who were in no shape responsible to them, and were liable to be influenced by personal interests and motives. These are the reasons which led to the abolition of that method of appointment.

The proposition of the gentleman from Otsego, (Mr. Van Buren) would first receive his attention. He was of the opinion that the same evils would attend that method which had led to the destruction of the old council.

His method proposed that the judges of the court of common pleas in each county, should make out a list of the candidates for office within their respective counties, and that the supervisors of such counties should make out another. These lists shall be submitted to the governor, from which he shall appoint the justices of the peace for each county.

This board of supervisors, on an average, would consist of about thirteen members, who, together with the five judges in each county, would constitute a council of eighteen, for the nomination of the justices in each town, submitting to the governor the power of appointing and rejecting, as he may think proper, from these lists.

Sir, I want to know, said Mr. V. R. where, in this whole process, the people will be able to lay their hands on a single individual for the responsibility of a bad appointment? Should a person go to a supervisor, and enquire how such a man obtained his appointment, knowing him to be unfit for the office, and that in his own town he could not have obtained a nomination, the answer would be, I was opposed to that individual, still I was but one among thirteen—I was overpowered by the majority. The same would be the answer from the respective judges. When you come to the executive, and make the same enquiry, he would tell you he knew nothing about it. The constitution of the state has appointed a number of guardians over his conduct, and that he could do no other than comply with their recommendations.

Your magistrates are to hold for a considerable time, and it will be out of the power of the people to remove them.

In an early day of the session of this Convention, it was agreed to abolish the council of revision. One of the important reasons for which, was that the executive, legislative, and judicial departments should not be mingled. This was

the principal reason which led to so unanimous a vote on that subject. Now what do you propose to do? You propose to make your court of common pleas the organ of executive power. The power of appointment is added to that of administering the laws. You take this power from the executive and cast it upon the judiciary. This is in violation of all sound doctrine, and the effect will be to make your judiciary necessarily the instruments of party. You compel them to take a part in the political squabbles of your counties. Is this wise, or is it discreet? It has been said, and truly said, that a party judiciary is the greatest curse that can be inflicted upon any community. With respect to the original proposition in the report of the select committee, and the amendment offered by the gentleman from Oneida, I am decidedly in favour of the report of the committee. I am anxious to carry home to the people the power of appointing.

But we are told one day that the people are capable of voting for governor, senators, and members of assembly; and the next day they are considered incapable of electing justices of the peace in the very towns where they live—to-day they are all enlightened and virtuous, to-morrow they are all ignorant and vicious, and unfit to manage the most trifling concern in which they are immediately interested—they are considered the tools of designing demagogues, and subservient to the will of pettifoggers and constables. He could not understand the force of such reasoning. He was not so great an advocate for the merits of the people as many, still he would not consent that they were unfit to manage their own trifling concerns as well as others could manage them for them.

The people are honest in intention; it is true they may be deceived, and led astray by demagogues from their duty and interest, but they will soon discover their danger, and return to both.—They are as capable of electing their own justices as they are of electing their chief magistrate and members of the legislature. Show me an instance of a magistrate in the country deciding a controversy from impure motives, and I will show you an individual who is held in universal detestation—an individual who cannot again obtain the patronage of a single man in the community. If there is a subject in the whole train of social concerns, in which the people ought to have a voice, it is upon that of electing those who are to decide between individuals. With respect to these magistrates being elected by a political party—will not your supervisors be as likely to be elected by a party as your justices?

As to the effect to be produced by this method—you will produce the same party feelings in two distinct bodies of men in each county, and perpetuate it at the seat of government in your chief magistrate. These two lists of candidates are to be sent to the seat of government, where the same intrigue will be practised, and where the same irresponsibility exists as has been so much deprecated in our former council---and it would not be anticipating too much, to expect more deplorable consequences to result from such a plan, than had resulted from the former council.

Mr. King considered the appointment of this class of magistrates to be as important, in relation to the general welfare, as any other branch of the judiciary power. It was desirable, therefore, to adopt some plan which would secure to the people a due administration of justice, and exempt them from the evils which had existed under the present council. He believed it would be more satisfactory were these appointments completely local; and it was much to be wished, that the appointing power, instead of being concentrated in one place, should be diffused through the whole community. Instead of bringing up to the central power all the authority in the state, he thought it more safe, more prudent, and satisfactory, to carry it down to the people.

Originally, justices were only conservators of the peace—preservers of tranquillity among neighbourhoods. In the course of time, their jurisdiction was extended over property, and had probably been carried farther here than in any other state in the Union. In England, they were originally elected by the people—not by the freeholders, not by the *liberi homines*, but by the inhabitants at large. So were coroners, and some other officers allied to that department. It would seem strange, then, that in this country, where no ranks of nobility, and no privileged orders exist, and where there is so much intelligence and vir-

tue in the people, that we cannot elect these magistrates without going up to the governor. The amendment under consideration begins with the people—the nomination proceeds from among them, so far, especially, as it relates to the supervisors. Why, then, could it not be decided nearer home?

Mr. K. would prefer, if no better plan could be devised, that the nomination should be made by the board of supervisors, and that the county courts should have the power of appointment, rather than carry it up to the executive. But what hinders the people from collecting and electing by ballot? There was no greater danger of controversy, than in the selection of other officers. Mr. K. did not fear extending the power of election, with proper reserves, to the coroners and to other higher officers. The plan under consideration was calculated to bring all under the control of the central authority; and although it had been stated that much had been cut off from the powers of the existing council, yet there would still be enough remaining for solicitation and intrigue.

Judge Van Ness said, as there were a number of different propositions before the committee, he felt it a duty to submit to their consideration his views on the subject generally.

It will be useful, said he, before I proceed, to go back for a moment and see what has already been done, and extract from the votes which have been given, some principles which they appear to have established. When the question was taken on the council of appointment, we voted unanimously for its abolition. After this, an honourable gentleman from Erie (Mr. Russell) presented a proposition, which was in effect to reanimate the old council of appointment. I imagine it was so considered; and by another vote, we almost unanimously pronounced the inutility of establishing another council upon principles so similar to the one which we had just abolished. I will not go into the reasons which influenced these votes; but it is obvious, that our former council as it existed, was not such an one as was satisfactory to the people, and they were therefore willing to abolish it. Indeed, I cannot be mistaken, when I say, that the people, from Suffolk to Niagara, called loudly for the abolition of the council of appointment, and the substitution of some other plan. And I believe, that if the public opinion could be ascertained, it would be almost unanimously in favour of giving the appointment of town and county officers in some shape, directly, or indirectly, to the people; and I have no doubt, that every member of this committee, if he will examine his own mind candidly, will find that this was the prominent cause which led to the calling of this Convention. They expected that this power would be given to them, and I fear we shall disappoint their just expectations in case we withhold it. The great principle, which in my judgment actuated this Convention in abolishing the old council of appointment, was to accomplish this object, by sending home to the people, as far as it can be done with safety, the right which they claimed.

We have now before us two or three propositions, the first of which I shall proceed to examine; I mean the one introduced by the gentleman from Otsego, (Mr. Van Buren.) He proposes that the supervisors and judges of each county shall make out two distinct lists of candidates for the office of justice of the peace, and present them to the governor, from which he is to appoint such as he shall think proper. Another proposition has been suggested by the honourable gentleman from Queens, (Mr. King,) that the appointments be made by the supervisors; and a third is presented by the report of the select committee, providing for their election by the people. I shall confine myself, at present, to the subject of justices of the peace, as the gentleman from Delaware (Mr. Root) has anticipated me, by submitting a proposition that sheriffs be elected by the people. If the plan proposed by the gentleman from Oneida, (Mr. Platt,) of creating local councils of appointment, should not succeed, I shall give my support to the proposition of the gentleman from Delaware.

Should the proposition of the gentleman from Otsego succeed, it will be recollected, that not a single, solitary office, either in the town, county, or state, will be given directly to the people, except in the militia. I do not mean by this, to set myself up as a clamorous advocate for the people, nor to contend that they ought to have the election of all the officers of government; but if they

are worthy of the privilege of electing any of their officers, they certainly are most fit to elect their own magistrates within their respective towns.

The first objection which I have to this proposition, (Mr. Van Buren's,) is this :—It is delusive; it holds out to the people, that the supervisors and judges are to make their appointments, when in fact, it is the governor alone who will make them.

One portion of this power of nomination is given to the judges of your court of common pleas, and another portion to your supervisors. Let us look at these two bodies of men separately. Those gentlemen who come from the country will recognize, that the supervisors are less a political body than any other in the community; one reason for which is, that the people are so deeply interested in the faithful discharge of the duty devolving on them, that they very frequently lay aside political feelings in the selection of these men. These officers have to determine how much money shall be drawn from the county treasury for town and county charges, and for what purposes it shall be applied—they apportion the taxes among the different towns—they say how much shall be paid to support their county prison, and how much for all other town and county purposes. They are very cautious to impose no greater burthens than the people ought to bear. It is from such causes, that the interests of the people have overcome their personal enmities and political feelings, in electing supervisors; and that being the case, has brought into office a class of men, as respectable as any body of men congregated for public purposes in the community. Is it not highly important, then, that this character be preserved? Shall we extend to them any greater appointing power than they now possess, which is that of appointing their clerk and county treasurer? The moment they have a right to say, who shall be the magistrates of their county, (and by multiplying the number of towns in each county by four, you will see the number that they will have to appoint,) will not the people at their town meetings be diverted from that steady and prudent course, which they have heretofore pursued in the election of their supervisors? Will not these anxious justices of the peace (and if it should be extended so as to include the sheriff, he may be carried to the account) use great exertions to carry their points, by electing a supervisor who will favour their appointment? In a greater or less degree it will be the case.

Another objection is this :—You cannot expect unanimity among them, when there are from ten to thirty, or more, collected together. What will be the consequence, should we continue to have parties as we now have? Instead of their nominations being unanimous, they will be made by a bare majority; and I ask if it is not highly probable, that two or three wealthy, influential, or cunning members of that board, will control all the appointments that are to proceed from these nominations? It will in effect be a nomination of a majority of these supervisors.

These are, in my opinion, substantial reasons why we should not put this power into their hands.

With respect to giving it to your judges, are there not unanswerable objections? In the first place, how are these judges appointed? It will be readily perceived, that you unite with your supervisors a set of men not at all dependant on the people for their offices—they are appointed by your governor and senate. What were the objections to the old council of appointment? It was thought inexpedient that the whole appointing power should be at the seat of government; and notwithstanding we have condemned that mode, we are to permit the judges of your court of common pleas to be appointed by the general appointing power—the governor, in substance, appointing them himself. What is the present duty of our judges? It is to administer justice. And we are now called upon to convert them into a political junto, by giving them the nomination of all the justices of the peace in the state. I agree, that the character of these county courts has been improved, by limiting the number of judges. We may naturally expect, these judges will be selected by the governor to answer his own party feelings; if so, they will become a political body, and if a political body, will not their usefulness as judges be destroyed?

But this is not all. It is proposed to give the judges, together with the su-

pervisors, not only the nomination of all the justices of the peace, but the report of the committee, and I think very justly, proposes to confer on the county courts, the right of appointing their own clerks and district attorneys, which, except that of sheriff, are the most lucrative offices in the state.

Here, I ask again, what is to be left to the people? Nothing but the election of your governor and legislature—all your great state officers are made without their interposition, down to the judges of your county courts, and they are to be authorized to make their clerks and district attorneys. Is this not, in effect, establishing a council of appointment on as bad, or even worse principles, than those which we have so lately declared, should exist no longer? Now, the governor makes your judges, the judges make their clerks and district attorneys.—Is not this bringing it back where it sarted from? Again; the judges and supervisors make nominations, and your governor makes the appointments. Your governor is to hold but for one year; and unless human nature has changed, that governor will be careful to select such men, as will take the best means to secure his re-election at the expiration of his term: And are we to suppose that a governor once elected, will not desire a re-election?—If so, he will select his friends, instead of his enemies. This may answer the present purpose; but we must recollect the vicissitudes of party,—what will do well to-day, may not answer to-morrow. I hope and presume, this Convention does not act from party feelings; but I can assure them, that if you give a board of supervisors the power which is proposed to be given to them, their political friends will have the preference, and the same thing is equally true as to your judges. It is in fact, and in truth, bringing this power back to be exercised at the seat of government, as heretofore, which system we have almost unanimously exploded, and had so much reason to consider as the great source of our political afflictions.

There is another objection to this plan, and that is, the total want of responsibility in all the parties engaged to carry it into effect. But I will not dwell on this point, as it has already been so ably explained by others. If a supervisor is called on to answer for a bad appointment, he has only to say, that he was overruled by his associates. If you call on a judge, the same answer will excuse him. If you go to the governor, he will say that he had no discretion; he lived in Albany, and was called on to make an appointment; he knew nothing about this man, either politically or morally; he received such and such nominations, and put them into a box from which he must have drawn this man's name; thus completely shifting all responsibility from his shoulders. If the committee will look at this plan candidly, they will see that it is destitute of all responsibility. Indeed, there are greater difficulties in this project, than in any other that had been suggested; and no proposition has been brought forward, to which objections have not been made. What does this prove? That there may be an abuse of power, give it to whom you will; and all that can be done, is, to adopt that which is most free from objections, and most likely to be the safest. The committee have reported, that it is best to give it to the people in their respective towns—I am not insensible that objections may be raised to this course; but I think it can be demonstrated, that there are fewer objections to it, than to any other that has been offered. It is agreed on all hands, that the justices of the peace shall no longer be appointed at the seat of government by the general appointing power. Even the gentleman from Otsego has conceded that they ought not to be exclusively appointed here; but that the power of selecting them should be given back in some shape, and to a certain extent, to the people. It has likewise been said by that gentleman, if you make justices elective, you should also make the chancellor and judges of the supreme court elective. We have not that subject now under consideration, and therefore I will say no more on the subject than this; if this Convention in its wisdom thinks that the public good will be promoted by having the judges of the supreme court and chancellor elected by the people, (and I presume no man will wish to do it unless it is to promote the public good,) I shall feel myself bound to bow with all deference to such determination. It is a subject on which I shall never trouble the Convention, on one side or the other. We are told that such a project will be dis-

tinctly proposed, if we make the justices elective. I trust if it will be right then, it is equally right now. We all agree that the people ought to be consulted in their counties, who shall be their town and county magistrates. The gentleman from Otsego admits this in his own plan. On this subject, I must acknowledge my mind has been vibrating, whether to give the election directly to the people, or to have it as has been proposed by the gentleman from Queens. Let us first examine the report of the committee, which proposes that these officers shall be elected by the people themselves. What are the objections to this plan? But it is necessary that it should be again read, so that it may be distinctly understood. [Here he read that part of the report.] Many officers of towns are required to be freeholders, and perhaps it would be well to provide that justices should be freeholders also; but that may be done hereafter, if it should be thought expedient.

Now what are the objections to this plan? In the first place, it is said, that this privilege of election ought not to be extended or granted to the people, because they are incompetent to exercise it with discretion and safety. Every one knows that heretofore the justices have been appointed by a few individuals in the different counties, who are called the leaders of their respective parties, and who have generally consulted a few subordinate leaders in the towns. Now instead of persevering in this destructive course, by which a few factious men calling themselves the people, have exercised a most important power, I am for restoring to the people their rights. Instead of allowing a few men of either party to dictate these appointments, let the privilege be exercised by the people directly, who, if they are fit to elect any public officer, are most fit to elect their justices. But it is said this will produce great confusion, and irritation at the town meetings, and that improper measures will be taken to corrupt and influence the elections.

Let us look at this for a moment. I was disposed, for one, that one branch of the legislature, (the senate,) should be elected by landholders. The Convention, however, decided that I was wrong. It was then determined that the people might be safely trusted; that every male citizen of twenty-one years of age, who had served in the militia, or worked on the highways, should be entitled to vote for every elective officer of the government. Some gentlemen then argued that this privilege might be safely extended to all such persons, and that it would not be abused. The Convention have given their sanction to these arguments; and what do these same gentlemen now tell us? Why, that the people are incompetent to meet together in their respective towns, and elect their justices of the peace! They may, say these gentlemen, be trusted to elect the governor, senators, and members of assembly—above all, that senate, the members of which sit in the court of errors—the court of the last resort, from which there is no appeal—the court that decides upon the life, liberty, and property of every citizen of this great community—and yet, strange as it may seem, we are now told, that they cannot even be trusted to elect the petty magistrates of their own towns!! I wish to speak with humility and deference, but I am obliged to declare, that I have never witnessed more glaring inconsistency.

The same gentlemen have been pleased to say, that the constables and pettifoggers of the county, will combine their influence, and control the people in the election of their magistrates. It is no more likely that they will combine and control the election of magistrates, than they will in electing supervisors, and other town officers, and the members of assembly and senate, and the governor. If these two classes of men are so vile and corrupt as they are represented to be, we ought to exclude them from the privilege of voting. But I cannot believe that these ever do, or ever will, control the people in their elections. There have been many instances when the substantial freeholders have neglected to attend the town elections, and left them to be managed by pettifoggers; but let them have the privilege of making their own justices of the peace; place their interest along side of their duty—let their own benefit, public interest, and public duty, go hand in hand; and they will turn out unanimously. Bring the power of making these officers home to their firesides—the officers who are to protect their property against the unlawful encroachment of thieves and robbers, and every man who has any thing to save, will find it his in-

terest to attend the elections to elect the best of men—first, to protect his individual rights and property—next to administer equal justice in the town. The people have the deepest interest to elect the best men to this office. They authorise the disbursements for the support of the poor, which is already the severest burden imposed upon the property of the state, and is growing more so every year. These considerations would induce the people to be cautious who they selected for this office; and if the men who pay the taxes of the town, will go to the polls, there is nothing to be feared from the influence of constables and pettifoggers.

The tumult and commotion which will be the consequence of conferring upon the people the privilege of electing their justices, has been urged as a decisive objection against it. I am persuaded that gentleman are mistaken on this point. But does not the same objection apply with undiminished force to the proposition of the gentleman from Otsego? If the judges of the common pleas are to have a voice in the nomination of justices, there will be a battle in every county, to see who these judges shall be, and this battle must be fought over again at the seat of government, by those who take the lead in the counties interested. Another battle must be fought at home to see who shall be your supervisors; and after all, the great battle is to be fought at the seat of government, to get possession of the ear of the governor, who is after all to decide the whole matter. But let the people meet the justices themselves at home, and there will be but one struggle, and that will be conducted, as past experience has shewn, with as much order and decency as can reasonably be expected. The character of our people, hitherto has been such, and to their honour be it said, that few disorders have occurred at our elections, and these have been promoted by the worst portion of them—a spirit will grow out of sending the the election of the local officers of the government to the people that will assuage the bitter spirit of party which has hitherto been created, and exasperated by men whose importance depends upon perpetuating it—that will rise superior to mere party views—Compromises will grow out of it and it will eventuate in the selection of justices distinguished for their intelligence and virtue. They will banish all party feelings, if I am at all a judge of the human heart; and in the course of two or three years, good feelings will grow out of this method, and the best men will be elected to their offices, who will be a blessing to their towns. I have already stated, that the governor will have to act without the necessary knowledge of the individuals whom he is to appoint, and this is an important reason, why I am anxious to give it to the people—they will have more knowledge than he can have. When the people know them, and the governor cannot know them, is it not best to give this power to them? I humbly think it is.

An objection has been made which I think ought to be answered. It has been said, that the independence of these justices will be affected, by being elected in this way. It must be considered that when the people come to elect, they will have every motive which can influence the mind of man to select the most competent persons in the towns; and this circumstance will be a strong inducement to the most respectable men to accept the office of justice. It has been cheapened and degraded heretofore, to such a degree that many men worthy of the office, have refused to accept it.

It has been contended that partiality will exist, in the administration of justice, should they be elected by the people. Suppose a justice of the peace issues a summons in favour of a man who voted for him, and against a man who voted against him, we are told that in this case, there would be a leaning towards the man who had supported his election. There may be such instances; but I believe they will be rare. The defendant, however, if he apprehends injustice from the magistrate, has a right to a trial by jury. But it is answered, the justice will have a right to issue a venire to such constable as he pleases to select, and will issue it to the constable that supported his election, who will be of different politics from the defendant. This argument goes to show that we ought to have neither justices nor constables; and that the provision of a trial by jury will only be adding to the corruption of the court, by the calling together of twelve corrupt men. The argument is founded on the supposition of the total corruption of the whole body of the people, and if that be the case, it

is a matter of no moment who appoints or who are public officers. But the justice will feel that every bystander has his eye on him, and he will be cautious, knowing the scrutiny with which he is watched. If he does not act cautiously, he must be without a heart and without a head. The great security, however, against the partiality of the justice, is derived from the right which every dissatisfied party has, to bring every cause under twenty-five dollars before the supreme court by certiorari; and I venture to say, that if it was not for this corrective, the proceedings of our justices of the peace would be abominable.

A word on the subject of throwing this power into the hands of the people. We have had the experience of forty-four years of electing town officers by the people in their town meetings. The people have been in a habit of electing their overseers of the poor, overseers of highways, supervisors and commissioners of highways, &c.—and these officers are very nearly as important as justices of the peace. We hear of no confusion, no tumults, at these elections,—and, generally speaking, these offices have been filled with very respectable and competent men. It is a fact universally acknowledged, that the office of justice, in consequence of the manner in which appointments to it have heretofore been made, has become so much degraded, that few respectable men will any longer accept of it. In but too many instances, instead of repressing, they have excited, and encouraged, and promoted it. It is to this cause that nineteen-twentieths of the law suits, which have distressed the community, is owing. Freeholders are dragged from their harvest, and other important business, day after day, to serve as jurors in the trial of causes of not six cents value; and whole neighbourhoods are disturbed and agitated by a few restless and litigious men, who have no business to employ them, and no property to take care of. Do I not speak the truth on this subject? By the plan which I advocate, you will place it in the power of respectable and practical men, to prevent, in a measure, the continuance of these evils, by a judicious selection of magistrates. Every farmer who has been dragged from his business again and again, will be cautious how he votes for a man that will make it a business to stir up strife and litigation. They will elect peace-makers. If I am not mistaken—if human nature has not changed, and if it is not debased below what I think it is—if there be any intelligence in the people, and they do not elect good magistrates, I will never predict again, nor venture to predict any thing. The very great confidence I feel in the results, is one of the strongest reasons for sending this power back to the people. I have thus pursued this subject as far as I understand it. I will now recapitulate in a few words.

In the first place, we shall try this plan, accomplish an important object, that of taking this power from the general appointing power.

Secondly, we shall be complying with the general sentiment of the enlightened and virtuous portion of the people on this subject.

In the third place, we shall convince them that we do not intend to give them the shadow and retain the substance—that we do not give them the chaff and retain the wheat.

And lastly, shall give the appointment of the justices of the peace, to those most interested in selecting the most upright, moral, and intelligent men, that can be found, to fill the station.

And, let me add, that if you do not give the people, the power, which of all others, they most desire, and are most competent to exercise with the greatest discretion. I do think, they will have strong reasons to complain that we have not done our duty.

From all these considerations, I shall vote for giving this power directly to the people. I have stated my reasons boldly; yet with deference to every gentleman in this Convention. If this is not adopted, I shall vote for the plan that comes the nearest to it; but I hope, we shall agree, and instead of forming any intermediate power, or sending it back to Albany, give it to its lawful owners, the people. It will be less complicated, and less expensive. If this power is improperly exercised by the people, they bring the evil on themselves, and will soon be willing to correct it.

This proposition commends itself another way—it is true, that the first election may be attended with some little confusion, but when once the offices are

filled, there will only be vacancies occasionally, to be filled, and an election of justices only, once in three or four years.

I shall vote against the proposition of the gentleman from Otsego, because I think the report of the committee preferable to his, or to any other proposition that has come to my knowledge.

Mr. Van Buren said he would briefly reply to some of the observations which had fallen from the honourable gentleman from Columbia, (Judge Van Ness,) and would also add a few words, in answer to the suggestion of his venerable friend from Queens, (Mr. King.)

The honourable gentleman from Columbia had examined and discussed the matter with a degree of zeal and ability proportionate to the very deep interest he naturally took in it: In one respect, he said, he fully accorded with him—that in the formation of a constitution of government, they ought to divest themselves of the influence of party. All agree in deprecating party spirit, and many have admonished us, that we cannot be too scrupulously cautious on this subject: He was well satisfied, that, if we all practised upon our own precepts—if we did, in fact, smother all feelings of party, it could not be possible that we should have so much difficulty in providing for the appointment of justices of the peace.

He could not suppress his apprehension that the immediate effect on the political interests of the state, of which his amendment was supposed susceptible, had called forth much of the opposition it had to contend with. He did not pretend to be more exempt from the influence of party feelings than others; but he would not fail on all occasions, to act openly and above board, and assign the true motives of his vote and conduct.

The gentleman from Columbia had said, that as yet, we had done nothing for the people—that we had not given them any greater share of influence in the selection of their local officers, than they had before enjoyed. That gentleman's solicitude for the privileges of the people is commendable: But, said Mr. V. B. is the assertion true, sir? If it was, it would be a matter worthy of serious consideration. But, he continued, it is not correct. In the first place, they had given to the people, the right of choosing more than eight thousand militia officers: Was this nothing? But we were told that the public care nothing about this right! In this respect, too, the gentleman was greatly in error. There was no subject on which men felt a more lively interest. Let a militia officer be improperly superseded or supplanted, and they would find that it was a matter of no small interest or concern with the people. What has induced our respective chief magistrates to travel out of the ordinary course, and indulge in the granting of brevet commissions, if there was no solicitude in regard to military appointments? There was, he said, great anxiety on this subject.

There are, said Mr. Van Buren, about 6600 civil officers in this state. Of this number, by the report of the select committee it was proposed to leave three thousand six hundred, for which, in consequence of their liability to frequent changes, no constitutional provision was made by the committee, to be appointed in such manner as the legislature shall designate. Was this nothing? If the people desire to have these officers elected, they will send to the legislature, such men as will obey their wishes in this respect; if they are not made elective, it will be because the people do not wish it; and they can, in this way, bring home to themselves the choice of these three thousand six hundred officers.

With respect to the residue of the number, it was proposed to leave it with the supervisors of the counties, to nominate as many candidates for each town as there were magistrates to be appointed in them respectively: And that the judges of the courts of common pleas should in like manner nominate for each town; if they agreed, the officers on whom they so agreed, should be thus appointed, and so far only as they disagreed, the lists should be sent to the governor, from these lists it should be left to the executive to select. The list presented by the supervisors, would very generally be in accordance with the sentiments of the people, as it must be supposed that they would consult their wishes and views on the subject. And is this, asked Mr. V. B. giving chaff to the people?

We have, sir, continued he, challenged gentlemen to shew, why it would not

be as fit, and proper to elect the higher judicial officers, as magistrates for the towns; no answer had been given to this enquiry, because none could be given. It must be perfectly obvious, that every consideration that would be urged in favour of electing justices of the peace, would apply in favour of having the judges of the higher tribunals also elective; and that even fewer objections exist to having those courts selected in this way; this had not been mentioned as a threat, that a proposition of that nature would be made; but as an argument to shew the impropriety of having any judicial officers elected, in order to test the sincerity of some gentlemen's solicitude for the people. In this we are consistent throughout: the inconsistency was on the part of those who were for having the higher judicial officers appointed, and the justices of the peace elected.

We do not, sir, said Mr. V. B. deny the competency of the people to make a proper choice; this argument has been unfairly and untruly stated. Those who oppose the election of justices, do not do so because they have any distrust of the people. The objection to having them elected, did not flow from that consideration; but was with respect to the officer elected. It was because the magistrate would of necessity be acquainted with all, who opposed and who supported him. This would more or less bias his mind in favour of those, to whom he owed his election. It would be giving the rich and powerful a great advantage over the poor; and even, if it did not, it would excite jealousy and suspicion of unfairness on his part; which in its operation, would be nearly as prejudicial to the public peace, as if real injustice was done. These were the reasons, which had led him, and others, to doubt the propriety of having magistrates elected. The gentleman from Columbia, however, has told us, that there can be no danger from a want of independence, or from the partiality of magistrates—he says their conduct will be watched, and they will not dare to act improperly. Watched by whom? By those whom they intend to favour, and who will be able, and willing to screen them from harm, and support them against the efforts of injured and oppressed poverty, to procure redress!! But the defendant may call a jury if he has not confidence in the justice: a mighty boon, truly! Am I to tell the gentleman from Columbia, how little advantage a jury is to a party, if the court is against them? How, sir, is he to get his facts, on which he relies, before the jury? Is not the court the crucible through which they have to pass, before they get there? And does not daily experience prove, that in civil causes, the court can in almost every case, regulate the verdict of the jury, by the exclusive power they possess, to decide all questions of law? Again, we are told that where injustice is done by the magistrate, the party injured, may obtain redress by means of a certiorari! This was a reason, he said, he had hardly expected to have heard from that quarter: the gentleman from Columbia, well knew, that the remedy by certiorari, would not reach one in twenty cases where injustice had been suffered.

It is, said Mr. V. B. very desirable to restore peace and quiet to the community: he was willing to do all in his power to promote so worthy an object. But how was this to be done? Will the election of justices by the people, have a greater tendency to remove strife, than the project to have them selected in the manner proposed by the amendment he had submitted? He thought not.

The gentleman from Columbia, says, this nomination by the supervisors would create violence and strife in their elections, when it is known, that they were to present the candidates to be appointed. But if the election of those, who are merely to nominate, will create this violence and strife, he could not perceive why there should be less difficulty, when the officers themselves, were to be directly elected by the people. That they are important offices, the gentleman has himself told us; and he has also told us that their election will call to the polls, all the farmers, and men who have an interest in the due admintration of justice; and yet he would have us believe, that the election of magistrates will produce no strife or angry contests: This, said Mr. V. B. I cannot comprehend! It was generally supposed that the degree of warmth and strife at elections, was in proportion to the interest felt by the electors in the result.

He would add one word in reply to the remarks of the honourable gentleman

from Queens. He would have the people select the candidates by ballot, and that the names of those having the highest number of votes, as also of those who had the next highest, should be presented to the courts of common pleas, who should be authorized to appoint the requisite number from among the names thus presented. The consequence of this would be, that in every town, there would be two sets of nominations of different politics, and it would create a strong temptation for the judges to decide purely on party grounds ; and so far, therefore, from this being the means of allaying strife, it would greatly increase it. But if the selection should be made by the supervisors and the judges of the courts of common pleas, it was morally certain that in a vast majority of cases, the same persons would be recommended by both, because they would be of the same politics. We may, said Mr. V. B. speak of the practical operation of this measure, founded on what we all know will happen from the partiality and attachment, which men of the same political sentiments have for each other, without incurring the censure of being influenced by party motives in bringing forward this proposition. It would operate sometimes in favour of one party, and sometimes of another ; the great object was to direct these party attachments to the selection of good men, and to secure the independence of the magistrates—that the laws may be administered without partiality, or suspicion of partiality. Where the supervisors and judges were of the same politics, they would be cautious to recommend none but men of fair characters, and such as were competent ; and where they differed, the governor would sesect ; and in making this selection he would consider himself bound, on all occasions, to take those who were of the same politics with himself ; he would most likely be disposed to deal liberally with his opponents.

The gentleman from Queens, says we must cut asunder all connexion between the executive and the local authorities. I am, sir, said Mr. V. B. in the habit of receiving his opinions with great respect and deference, but on the present occasion he was constrained to differ with him. Why, he asked, should this be done? Is it for the purpose of keeping out of his hands a patronage which would add too much to his power ? It was not for the benefit of the chief magistrate that he would confer on him this qualified power in the appointment of magistrates, but for the advancement of the public good. Past experience had proved, that power of this kind added nothing to the stability of the executive ; it gave him no strength, but, on the contrary, was calculated to weaken him. We have seen several examples in this state, where the possession of the power of appointment has destroyed its possessors. It was the case in 1807, 1811, 1813, and again upon a very recent occasion. If these officers could be elected by the people, consistently with their necessary independence, and the due administration of justice, he would, without hesitation, vote for it ; but he felt a strong conviction that it was wrong in principle to elect judicial officers, and he was very confident its practical operation would be unfavourable to the public interest.

Such being his sincere opinion, he could not unite with his honourable friend from Queens, to separate the executive entirely from the magistracy of the state, for the sole purpose of destroying patronage and avoiding political influence. That power would be put in the hands of the executive, not for himself, but to secure to the majority of the people that control and influence in every section of the state to which they are justly entitled. The executive is but their agent to carry their wishes into effect, and this he does upon great responsibility. That supremacy of the majority which it is proposed to surrender, is of vital importance to them. It is the just reward of their fortitude, their patriotism and fidelity, in war and in peace. It has been hardly earned and fairly won, and they ought to enjoy it. My feelings, sir, do not lead me to such a course. My constituents have not authorized me to make such a surrender, and I have no idea of usurping it.

Look at the general government : All its officers are appointed by the general appointing power ; no inconvenience has grown out of this practice there—and we have not heard that any one wished to have any change in this part of the constitution of the United States. The United States' officers, might be

well chosen in the different states; still it never has been supposed proper to do so, for the sole purpose of stripping the executive of power and influence.

He was, he said, not only satisfied that it was proper that there should be this connexion between the executive and these local officers, but that the due administration of justice, and the preservation of the public peace, required it. He is charged with the execution of the laws; he must execute them through the agency of magistrates: and would not, he asked, this connexion promote this object? He would call the attention of gentlemen to the state of things which existed during the late war; he would not do so for the purpose of reviving any improper feelings; but to illustrate and enforce the propriety of the sentiments he had advanced. It would be recollected by all, what difficulties and embarrassments had been occasioned by this want of connexion between the executive and the magistracy of the state. The council of appointment were at that time of different politics with the executive, and all the officers of their appointment were opposed to the war and its prosecution. The prejudice which those collisions produced to the public service, and the unceasing and unavailing complaints of the executive, of a want of co-operation of the public officers, surely cannot so soon be forgotten.

I am, therefore, said Mr. V. B. inasmuch as this power must be vested somewhere, for giving the control to the majority of the state. If, in consequence of the avowal of this sentiment, I subject myself to the charge of intolerance, I submit to it. My conscience acquits me of any such motives. I feel that I may with safety appeal to my political course for an ample refutation of such imputations; and I cannot but think that the number of my political adversaries, who would be constrained to exonerate me, would not be inconsiderable. But, sir, these are matters with which the committee have no concern; they will be no longer troubled with them—the question must be tested by other considerations.

Mr. King adverted to the remark that the chancellor and judges of the supreme court ought to be put upon the same footing with regard to their appointment. It could not be true that there was no differance between the highest and lowest offices in the judiciary department. Does the minor officer exercise all the duty or the power of the higher? Were the same experience and knowledge rendered necessary in the one, as in the other? The same unquestionable and unquestioned integrity, the same industry, the same distinguished eminence in learning, and the same simplicity and purity of character, in the walks of private life? Mr. K. believed that there was no necessary connexion between the executive or legislature, and the subordinate magistrates; and he referred to the mode of appointment adopted in Connecticut. He would add one word on the subject of judicial independence. It was intended by it, that each individual in a judcial office should be able to exercise the duties of that office with freedom. The independence to which he had alluded, did not consist in a contempt of public opinion, of morals, character, or virtue.

Col. Young followed. He dwelt upon the important operation which the administration of justice, by the means of justices of the peace, had upon the great body of the community. He stated that vastly more in number were interested in having impartial magistrates in these tribunals, than in the superior courts. He gave a detailed account of their crimiual jurisdiction; their power to arrest and imprison; also, to try for smaller offences. He contended that if elected, they would not be either independent or impartial; or if they were so, would they be free from suspicion and from the jealousy of being partial to those who had been active in their election?

With respect to supervisors, he said, it was a different case. They had no private controversies to decide; their business was to take care of the concerns of the town.

The objection to having magistrates elected, he said, was not because the people were not competent and sufficiently enlightened, to make a discreet choice, but that the officer deriving his authority in this way, and from a confined circle, could not, from the constitution of our nature, be an independent and an impartial magistrate. There was reason, too, he said, to apprehend on some occasions, that these elections might be carried by intrigue and management, and the officers would be located in improper parts of the town. Petti-

foggers and constables would feel a direct interest in these elections, and would be engaged constantly to promote their own views, while the farmers would neither have leisure nor inclination to spend more time than to go to the poll and vote.

But gentlemen appeared to fear an improper interferance at Albany, if the appointment was left to the governor; and reference had been made to what had taken place under the old system. Sir, said Mr. Y. the corruptions and intrigues under the old system, were not, with respect, to such minor officers, as justices of the peace, but to those of greater honour, and more emolument.

An objection urged against the amendment of the gentleman from Otsego, was, that the governor would not be acquainted with the character or standing of the persons nominated; and could not, therefore, make a discreet selection. He will be able, said Mr. Y. to obtain the desired information, when he does not possess it of himself, from the representatives in the senate and assembly, from the different counties.

Mr. Edwards said he was not about to enter into a discussion of the merits of the question before the committee. He was in favour of the proposition that had been presented by the select committee, of electing the justices of the peace. He wished to test the sentiments of the committee with respect to that question, after which he should be better prepared to vote upon the proposition of the honourable gentleman from Otsego. With a view to that object he would propose that the second, third, and fourth sections of the report be passed over, together with the amendment of the honourable gentleman from Otsego, to try the sense of the committee on the question presented by the sixth section, to which he had referred.

A question of order arose on the subject, when the chairman decided that a motion to postpone could not be made unless limited to a time certain.

It was thereupon moved, in conformity to the suggestion of Mr. Edwards, that the second, third, and fourth sections of this report, together with the motion of the gentleman from Otsego, (Mr. Van Buren,) be postponed until to-morrow. Carried.

Chief Justice Spencer, said he was in favour of having the justices of the peace elected by the people, but if that proposition should fail, he would then move another amendment for the consideration of the Convention, which appeared to him to be free from some of the objections to the amendment of the gentleman from Otsego. He would have the supervisors nominate, and the courts of common pleas to appoint the justices.

Mr. Munro, said he was satisfied that it would not do to have the justices elected, and if that proposition should be negatived, as he hoped it would be, he should suggest one further amendment for the consideration of the Convention.

Gen. J. R. Van Rensselaer spoke a few minutes in favour of the election by the people.

Mr. Burroughs was opposed to having the justices elected. There would, very generally, be a great many more candidates than the number of magistrates to be elected; each neighbourhood would be for locating these officers near themselves, and in this way, a small majority would, in many cases, elect the magistrates of the town.

He was not opposed to the people, nor did he, or those who acted with him on this subject, question or doubt their competency, or their discretion. But they knew magistrates elected, could not feel that independence that was necessary in a judicial office.

There were, he said, some gentlemen who had not, hitherto, been any way distinguished for entertaining popular opinions, who had become strangely altered. They were now seen formost in the race of democracy. This, to him, appeared somewhat unaccountable. Their minds must have undergone a great and very singular change. He was for pushing his old and steady course as a republican, attached to the principles of a representative government; and he would not consent to the adoption of any measures which he believed would be injurious to the stability of such a government, or which was calculated to bring it into disrepute.

The fifth section of the report was then taken up, pursuant to an order of the committee; and after a discussion of the same by Messrs. J. R. Van Rensselaer, Burroughs, Brooks, and Fairlie, the question was taken by ayes and noes, and decided in the negative, as follows :

NOES.—Messrs. Barlow, Beckwith, Birdseye, Breese, Buel, Burroughs, Carver, Case, Child, R. Clarke, Clyde, Cramer, Dodge, Dubois, Fairlie, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Jay, Jones, Knowles, Lansing, Munro, Nelson, Park, Pike, President, Pumpelly, Radcliff, Richards, Root, Ross, Russell, Seaman, Sheldon, I. Smith, Starkweather, Steele, I. Sutherland, Swift, Sylvester, Taylor, Tuttle, Van Buren, Van Horne, S. Van Rensselaer, Van Vechten, Wheeler, N. Williams, Yates, Young —57.

AYES—Messrs. Bacon, Baker, Bowman, Briggs, Brinkerhoff, Brooks, Carpenter, Collins, Day, Duer, Dyckman, Eastwood, Edwards, Fish, Hallock, Hees, Huntington, Hurd, Kent, King, Lefferts, A. Livingston, M'Call, Millikin, Moore, Paulding, Pitcher, Platt, Porter, Price, Reeve, Rhinelander, Rosebrugh, Sage, Sanders, N. Sanford, R. Sandford, Seeley, Sharpe, R. Smith, Spencer, Stagg, D. Southerland, Tallmadge, Townley, Van Fleet, Van Ness, J. R. Van Rensselaer, Ward, E. Webster, Wendover, Wheaton, E. Williams, Woodward—54.

On motion, the committee thereupon rose, reported progress, and obtained leave to sit again, and the Convention adjourned.

FRIDAY, OCTOBER 5, 1821.

After prayers by the Rev. Mr. De Witt, the President took his seat at the usual hour, and the journals of yesterday were read and approved.

THE APPOINTING POWER.

On motion of Mr. Ross, the Convention then resolved itself into a committee of the whole on the unfinished business of yesterday, (the appointing power.)

The motion of the honourable gentleman from Otsego, (Mr. Van Buren,) was stated to be the subject in order for the consideration of the committee,

Mr. Jay. I do not rise, Mr. Chairman, to repeat arguments which have been already urged, nor to discuss questions that have been already exhausted. —I wish only to notice a single topic and upon that, I shall detain the committee but a few minutes. I have heard, sir, repeatedly, from all parts of this assembly, professions of an anxious desire to quench the flames of party spirit and to restore harmony, peace, and good will among the inhabitants of this state. I have lent a willing ear to professions of this nature and was inclined to hope, that the flame of party violence had spent its ray, and that though the waves had not yet entirely subsided, yet that shortly there would be, if not a perfect calm, at least that moderate undulation only which would prevent stagnation, and which is occasioned by the gentle and the healthful breeze. The gentleman from Otsego whose proposition is now upon your table, commenced his speech which we yesterday heard, by professions of the same nature. He approved cordially of an observation made by a gentleman from Columbia who preceded him, that we should decide without reference to party politics or feelings, without regard to the fleeting interests of the hour, but with a view to futurity and the lasting welfare of the state. But, sir, he concluded his speech with a declaration not easy to be reconciled with the professions made at its commencement. He concluded with an appeal to party feelings, and with a declaration that he did not consider himself authorized to give up the rightful supremacy of the majority, that is to say, he was not willing to give up the power now possessed by the dominant party, of stripping the minority of all share in the magistracy of the country. What is it, sir,

that engenders hatred and rancour between parties whether religious or political? It is the tyranny of majorities. What was it that stained the earth with blood and carnage in the wars which were kindled by religious intolerance? It was the tyranny of the dominant party. While the minds of men continue to be as various as their features, uniformity of opinion can never prevail. But while each man is suffered quietly to enjoy his own, a diversity of sentiment does not disturb the public tranquillity. So far as regards religious sentiments, the sad experience of ages of calamity has at length taught us this salutary truth,---and under the shadow of universal toleration the Presbyterian and the Episcopalian, the Roman Catholic and the Quaker, dwell together in brotherly love.

But the age of political toleration I fear has not yet arrived. The majority are entitled to rule the state, and to direct the motions of the government. If they will be contented with this, the minority will usually submit, and the peace of the community will not be disturbed. But if the dominant party are resolved not merely to govern, but to crush the minority; to pursue them into the obscurest recesses and remotest corners of the state; to strip them of every office, however humble; to pass against them, as it were, a decree of attainder; to corrupt their blood, and render them incapable to hold any place of honour or of trust; it is not to be expected they will tamely submit to such oppression —they will combine together—they will endeavour to overturn that tyrannical authority which overwhelms them. Hence an intestine war throughout the country; the father is arrayed against the son—the brother against the brother; and instead of loving his neighbour as himself, each man is filled with hatred, malice, and all uncharitableness. Such, sir, is the state of things which we have witnessed. Is this state of things to be perpetuated? Are we to construct our constitution with an express view to render it durable? "*O navis, ubi referent te novi fluctus? fortiter occupa portum.*"

Sir, it appears to me that it will be beneficial to the state, and that it will be found for the interest of the dominant party themselves, so to constitute the inferior magistracy, that the minority may not feel themselves aliens in their native land—that they may not be driven to despair, and goaded into rage; and that it will be peculiarly beneficial so to arrange it, that there may be some offices, however humble, which may be the rewards of quiet worth, and prudence, instead of bestowing all upon men, recommended principally as ardent political champions, or as the noisy and active agents at our elections. Thus we shall best provide for the peace of the state, and best secure an impartial and faithful administration of justice in the lower departments of our judiciary.

The plan of the gentleman from Otsego being (as he himself declares) intended to centre all appointments at the seat of government, in order that they may be at the disposal of the dominant party, is for that very reason one which I cannot approve. Power thus accumulated, is like the manure in the farmer's yard—collected in one heap, it putrifies, and corrupts, and taints the ambient air—disperse it, scatter it over his fields, it fertilizes the soil, covers it with healthful verdure, and clothes it with luxuriant harvests. How to dispose of this power, is a problem which we have all found of difficult solution. So to vest it, that on the one hand it may not be abused to party purposes, and that on the other, the magistrates to be appointed may not be warped into partiality by the natural consequences of popular elections, is much more desirable than easy to accomplish. Yet, I doubt not, a plan may be devised which will steer between this Scylla and Charybdis; perhaps a nomination by the town officers, subject to some control of the county court, might be effectual to this end. But any plan, which will secure an impartial administration of justice in the lower departments of the judiciary, and yet remove it from the influence of party at the seat of government, will receive my hearty approbation.

Mr. Bacon said, that he should ask the patience of the committee but a very short time. He wished to avoid those paths of argument which had been trod with a much firmer step than he was capable of, by many gentlemen before him, —his remarks would be rather of a desultory nature, and he hoped confined principally to some points which had not been much touched upon by those who had preceded him.

There was one idea, and marked characteristic which distinguished from each other the two propositions which were before them; the one reported by the select committee, and the other offered by way of amendment by the gentleman from Otsego—The first proposed to separate wholly from the general appointing power here, the appointment of the local magistracy, consisting of justices of the peace, and to give it directly and definitively to the people in their several towns. The other proposed still to connect it with, and hold it dependant upon the general appointing power, by giving the effective nomination to five men deriving their own power and office from the governor and senate,and leaving its confirmation to the governor alone—It is true, a separate power of recommendation was given to the supervisors, a body not at all connected with the executive, but which, it was absurd to suppose, would be of much avail in practice, when it happened not to concur with that of a body, who must always be men of similar views with the governor, and acting in unison with his feelings and policy. Here, then, after all, disguise it as we may under any such unsubstantial checks, must be the real and effective control over the appointment of the great body of our magistracy.

Suppose, that instead of delegating this incidental power of nomination to the county court, it was proposed to institute directly a council of appointment for each county, who should themselves derive their appointments from the governor and senate, would it be tolerated for a moment? and that is neither more nor less in effect,than the present proposed plan. I would ask particularly, how such a project would be received by the honourable members from New-York, for the appointment of their local officers. The answer to this question, is found in the report of the select committee. So strong is the repugnance of the people of that great city,to have their local affairs under the control,and their municipal officers appointed by the great fountain of power here at Albany, that they have prevailed upon the committee to report for them a separate and independent plan for the election of their officers, and leaving them free from all control here. But this case is not a peculiar one, the grievances of which they complain, are common to every other county and town in the state, nor ought they to expect to be the subjects of any particular favour, which may be refused to us in the country; our case is a common one, and requires a common remedy.

It is agreed on all hands, that the retention of the general appointing power here, under any form, is an immense one, though gentlemen may disagree as to its effects upon him who exercises it. If, as is supposed on the one side, its effect is to increase greatly the influence of the executive, to promote his political and personal views, and to fortify him in power, it surely cannot be desirable that he should retain it,as it leads to a system of governing corrupt in itself,and wholly destructive of that personal independence, in the citizens, which is necessary to preserve a government really republican and free. But, if, as has been urged with great force on the other hand by the gentleman from Otsego, the certain effect of the exercise of the power is in most cases the political destruction of him who wields it, and he has adduced from the history of the state many and strong instances of the correctness of his position, certainly it is not on that account the less prejudicial to the public welfare, and to the peace and prosperity of the state. Can that in any sense be a desirable feature in our constitution, which introduces necessarily into our public councils, a perpetual state of change and vibration, and which leads inevitably to the destruction of the executive power, without regard to the real character of his measures. What more decisive consideration can be urged against the continuance of a power in his hands, which, whether omnipotent, either to save or to destroy him, is equally dangerous. Surely the gentleman from Otsego, could not have been aware of the tendency of his argument on this point, else he would hardly have urged it upon our consideration.

In what manner this power will be generally used by those who exercise it, and that it will be to reward and strengthen their own political and personal friends, there can be no doubt, from all our experience of the past. Indeed, we need not ask this question, as we are already told in this grave debate, by gentlemen who are its advocates, not only that it will,but that it ought so to be used. We are told, that in all governments, both foreign, and in our own country

it is necessary that the magistracy of the state, be a body of men who are *loyal* (rather a high sounding word for a republican mouth) to the powers that be, and this not merely in the sense that they should be submissive to the laws of their country, but to the policy and the political views of their superior.

It is said, too, in periods of foreign war and domestic dissension, it is indispensable that the supremacy of the executive over all the subordinate magistrates of the state should be absolute and effectual; and reference is made, as it often has been, on other occasions here, when general arguments fail, to the events of the late war, and to the political divisions of that day, to illustrate the argument. There has seemed to be a disposition, on the part of some gentlemen, to resort, on all occasions, to the last war, and to the feelings which grew out of it, to promote the views which they entertained here; to make it a sort of political hobby-horse; and, like uncle Toby, they will insist, whatever be the subject that is started, to be forever fighting over their old battles in Flanders: for what good purpose these allusions are drawn in, on almost every subject, it is difficult to say. But who could ever have imagined, that an army of justices of the peace was an essential ingredient in the defence of a nation, either against foreign invasion or domestic insurrection; or that their services in the late war contributed mainly to that end. It had always been supposed, that our militia were more to be relied upon in all emergencies of that sort: and it may properly be pressed upon the gentleman from Otsego, if, as he maintains, the complete supremacy and control of the executive over the subordinate magistracy of the state is essential for the public safety in times of war and commotion, how much more essential is such control over the whole body of the officers of the militia? and how can the gentleman justify the relinguishing to the people, as he boasts that we have done, but a day or two since, the election of the entire corps of those officers? surely, if the gentleman's argument is a sound one on this point, this has been, on our part, a most improvident act. It cannot be, that this great controling power over the most humble judicial officer in every remote ramification of the state is at all necessary for any object of this sort; and in every other point of view it is, in its nature and practical operation, of a nature the most dangerous and corrupting; fatal to the peace of the community and the permanence of our best interests. How has it hitherto, and how always will it be brought to operate? By the exclusion from every place of public confidence and emolument, the executive attempts to crush every germ of opposition to himself and his policy: this creates a corresponding spirit of reaction, and a convulsive struggle in the minority, to rise from this state of universal proscription and degradation, and united with such portion of the majority as cannot be gratified with their share of executive favours, (for there are never enough to satisfy all,) they shake off the pressure, hurl him from his place, and supplant him by another, who goes on to act over the same scene, and soon to come to the same untimely end. Such has been our history too often; and such it will be, while we perpetuate the same destroying and corrupting principle in our constitution.

The disposition and attempt to govern too much, and too minutely, is, I verily conceive the great mistake into which our politicians of all parties, have too much fallen for a long time past, the consequence of which has almost invariably been that they have soon lost the power of governing at all. The great secret which can alone preserve our free institutions of government seems to me to be, that in a state extensive in territory, great in numbers, and rapidly increasing as is this, no free system can long continue, the great feature of which is to control the minute operations, and to regulate the local interests and concerns of the people in every remote extremity of the body politic. Such a system may well suit perhaps the circumstances of a small community like the little republic of Sanmarino, or of most of the small states of our American confederacy, where every hamlet is almost under the immediate eye of the central power; but can by no means apply to a state like this, already sufficiently large and populous for a small and independent empire. Let us not lose sight of the strong analogy which exists between our state government in relation to its subordinate divisions of counties, towns, and districts, and that of our confederated government, in relation to the various

members of which it is composed. It was once the serious apprehension of many of our wise, and honest statesmen, that a republic so extensive as the United States, could not long exist under a free form of government; the great secret of its security, consists in the numerous partitions of power which it makes, and its distribution to the various members which compose it, of the right to regulate all their local concerns, and their sectional interests agreeable to their own views. An attempt to bring these under the control and influence of one general head, would very soon bring the whole system to an end. And in a state of the great extent and growing numbers of this, such an attempt will, it is to be feared be equally ruinous. We cannot expect to do it under a mild and liberal system of government formed on the most free and republican principles; and those who do attempt it, must either be armed with one, which is sufficiently strong and energetic in its legitimate constitutional powers, to effect its object, or they must make it so by perverting the powers which it gives, and drawing to their aid those of influence and corruption. Let those gentlemen, who are ardently and sincerely attached to the principles of a simple, free, and democratic government, look well to these considerations, and not endanger the whole, by endeavouring to extend its controling power, to objects and concerns, which it is not competent to act upon, to any good purpose, but which may endanger in the end its very existence, and even our unity as a state, and a republic—for it is not extravagant to apprehend, that the inconveniences and dissensions, to which a perseverance in this system will lead, may at no distant time end, at least in a sectional division of the state.

Mr. J. Sutherland. The great unanimity, which prevailed in this house, (said Mr. S.) in favour of distributing the appointing power, relieved the subject of much of its embarrassment. He had discovered with regret, however, a disposition to vibrate from one extreme to the other. But it was human nature. It was an habitual error with men, convened for the purpose of modifying or reforming existing modes of government, to adopt such changes as should present the widest contrast to things as they had been. This disposition had been evinced here in the annual election of the executive; in the extension of the right of suffrage; and it was apparent in the progress of this question. It had been manifested, too, in a quarter, whence he could not have been prepared to expect it. Gentlemen, who had been heretofore proud of their moderation, were now going too far. They were throwing more into the hands of the people than was either expedient or proper. The election of justices of the peace was not called for by propriety or expediency. He was not apprehensive of any abuse of this privilege by the people; it was not from any dangerous propensity on their part, that he felt bound to oppose the immediate election of these, and all judicial officers; but of the control and influence under which the incumbents would go into office. The most powerful considerations for a departure from the impartial discharge of their official functions, would grow out of an immediate dependance upon popular favour; and he would erect the strongest barriers against the introduction of views and feelings, which would pervert all the great ends of justice. The plan under consideration, he regarded as the most unexceptionable. It created no new bodies of men; it chimed in with our institutions. The supervisors and judges could not feel any degree of dependance on the chief magistrate; nor could they be subject to his control. They were removed beyond his volition and influence; and their selections would be judicious and independent. Evils of this description were not to be either deprecated nor dreaded. The only plausible objection to the amendment, was the possible interference of party feelings in the election of supervisors. But even this was not formidable; it already existed in a degree more or less extensive, and had been generally inoperative so far as the selection of wise and discreet supervisors was concerned. He believed that the future selections would be less infected with party interference; that still greater care and discretion would be exercised; and that by the plan under consideration, a board, or electoral college, would be created, which would be practically and positively beneficial.

Chief Justice Spencer said he felt that he had already trespassed upon the patience of the committee, and he did not rise to enter minutely into the sub-

ject before them; he was aware that difficulties would present themselves in the adoption of any plan which might be devised. They had been made to vote down the proposition recommended by the select committee, but he was of opinion they should finally have to come back to it. He rose more particularly to notice a remark of a gentleman from Schoharie, (Mr. Sutherland,) as to the disposition to vibrate from one extreme to another—this now appears to be charged upon those who have been the most opposed to these vibrations. Mr. S. said he had voted for having the justices of the peace elected by the people. It was because he considered it the wisest plan, and he believed the people could not have anticipated that such a proposition would be opposed in this Convention. He had hoped, when they determined to break up the appointment of this great corps of magistrates at the seat of government, that they should have severed the great ligament of party.

To dispose of the justices of the peace, appears to be the great difficulty before the Convention. We are told that their election by the people will affect their integrity and independence. He had hoped that this would have been guarded against, by continuing them longer in office; although they might at first have their feelings a little warmed, they would when they found themselves safely secured in their office, without the liability of removal except for malconduct, rise superior to those trifling considerations which actuate little minds.

I had supposed the gentleman on my right, (Mr. Van Ness,) had sufficiently answered the objections raised by those who consider an election by the people so dangerous. But it would appear not. Much, also, has been said on the criminal power, which justices are allowed to exercise. Suppose a justice commits a man to jail, is he to lie there—or can he be relieved by bail or the *habeas corpus?* The judges of your courts would have a right to controvert the facts set forth in the mittimus—if they have any criminal jurisdiction it is very trifling. With regard to their civil jurisdiction, every man is allowed to guard against their partiality by demanding a jury. If he pleases he has a right to appeal to the higher courts, where all the merits of his cause are again laid open. Although a certiorari cannot meet all cases, yet every decision may come before these courts, and where improper testimony has been received, or proper testimony rejected, the judgment may be reversed.

The plan proposed by the gentleman from Otsego, struck me at first, as a good one; but the more it is examined, the less favourable it appears. If the object of making the office elective cannot be effected, I will vote for that plan which comes the nearest to it; as it is of vast importance to remove from the seat of government this contaminating power.

I am aware that the courts of common pleas have become more respectable, since the number of judges was diminished from twelve or fifteen in each county, to four or five—they may still continue to improve. Now, if these judges are to be the persons to select the candidates for office, is there not danger that it will have a tendency to swerve them from their duty? They may be candidates for office themselves—if so, will it not have an effect to induce them to fortify themselves against their opponents illegally? I should fear it would; and would much prefer, therefore, to lop them off and leave the power to the supervisors alone. It appears to me that it does give to the governor considerable patronage, although it may result to his detriment in the end. In this respect I perfectly concur in opinion with the remarks of the gentleman from Otsego. But I would not give him this power at all, and for the best of all reasons, that he can know nothing about the individuals he is to appoint.

There are now in this state upwards of six hundred towns, and in a few years there will be one thousand; the governor cannot, therefore, know any thing about these individuals—he must determine, as was suggested by my honourable colleague, on putting the names into a hat or box, and drawing them out, and the person who receives an office from him, will feel it a duty to come forward and vote for him, if he is again to run for the office of chief magistrate. I am anxious to put this power far away from the executive; and shall vote against any such method, unless, as a last alternative, I am driven to it. I did not rise to discuss the question, but to shew that there was not that disposition to vibrate to extremes, which the gentleman from Schoharie might have sup-

posed; and my vote will be given with a full belief that it is best to separate this power entirely from the executive.

Mr. Hogeboom observed, that the council of appointment had originally appeared to be a wise measure. For twenty years after its creation, it had gone on well; nor was it until the legislature had raised salaries too high, that the evil was felt. It was only the *effect*, not the *cause*, of the calamities that the community had endured. The error lay deeper than the council of appointment. But it is gone, and not a tear is shed at its departure. Mr. H. preferred an election of justices to this plan. It was a refinement of policy that he did not approve of, to make one judiciary system dependant on another. Mr. H. also thought it would give too great influence to wealthy individuals.

Mr. Buel rose to make a few additional remarks. He was in favour of having justices hold for a long time, and called the attention of the committee to the practice in other states, where they were permitted to hold for seven years, and during good behaviour. He inferred, from the experience of those states, that the plan was worthy of imitation; and he believed it was the intention of the framers of our present constitution, to have magistrates hold for a considerable length of time. He again alluded to the importance of their duties, both in civil and criminal causes, and said they possessed the power of convicting for any crime less than grand larceny. It had been urged by those opposed to the proposition, that the chief magistrate would not be acquainted with the individuals whom he would be called to appoint; but the plan appeared to him altogether preferable to the one heretofore practised, for recommending candidates to office. They would now be recommended by the official list of respectable men, whereas the appointing power had heretofore been dictated by the petitions of those incapable of advising, and unworthy of recommending.

Gen. Collins opposed the amendment. He said it was in effect organizing a political caucus in every county in the state, and was entirely carrying away from the people all participation in the appointing power.

Further observations were made by Mr. Bacon, in opposition to the amendment, who read from Jefferson's Notes on Virginia, in support of his opinions.

Mr. Van Buren, in reply, referred to the constitutions of Virginia, Kentucky, and Tennessee, shewing that the principle of his amendment was recognized in each. He was, he said, surprised at the observation made by his friend from Lewis, (Gen. Collins,) that the people would have less connexion with the appointments if made in this way, than they had under the old mode. Could not the people make their wishes known to the judges of the courts of common pleas, and the supervisors, with more facility than they could to the old council of appointment?

Col. Young. It was admitted, he said, by the gentleman from Albany, (Mr. Spencer,) that the justices if elected, might at first be influenced by considerations of who had opposed, and who supported them; but he contended that this influence would soon wear away; and he would ask whether it was possible that he should think the mode of selection a proper one, which would be attended with such consequences, even temporarily? The objections to the old council had not been occasioned by the abuse of their power in the appointment of justices of the peace; but with respect to higher offices, and to which greater emolument was attached. He had not, he said, ever received any appointment from them; he had neither brother nor son, who had been the objects of their favour. If they had heaped favours on him as they had on some others, he would not now reward them with scoffs and sneers. If, sir, said Mr. Y. this amendment succeeds, we shall not again hear of persons being appointed to office who have been guilty of arson—persons whose names are inscribed on your criminal calendars as guilty of infamous crimes: Neither the supervisors nor judges would have the hardihood to recommend to the executive any men whose characters are bad.

Mr. Van Vechten wished to express his views on this subject, but would not detain the committee long. It appeared to have been considered necessary, on all hands, to make allusions to matters calculated to excite unpleasant feelings: he did not, however, consider it commendable.

We are sent here, said he, not to complain of old sores, nor of wars that are past: We are sent here to amend our constitution for the good of the people of this state, without regard to what this man has done or may do. We have evidently arrived at a point in our business where it is difficult to determine the most advisable course to pursue. The question is, whether the proposition before the committee is worthy of adoption. On the one hand, it is contended that the appointing power ought to be in the chief magistrate; on the other, that it ought to be in the people; and it is again supposed by some, that an intermediate body ought to be intrusted with this power.

In the first place, what are the objections to its being exercised by the chief magistrate? It is said by some we shall experience all the evils of the old council. In the first place, he cannot be acquainted with the candidates. When a doubtful list is presented, he cannot determine from any personal knowledge of the men recommended; he must rely on information from some one else, as was the case in our former council of appointment, and thus essentially open a door for the same cabal and secret influence as was then experienced, although perhaps not to so great an extent. The supervisors and judges may perchance agree on the candidates; if so, why send a list to the seat of government to receive this formal act of the executive? Is it for the purpose of keeping up this constant bustle, at the expense of public virtue and character? Now if your governor is to have the appointment of these officers, wherefore the necessity of this nominating power? Will not these office-seekers come here as much as before? Will they not exercise in some degree the same corrupt influence, and will it not subject the chief magistrate to the liability of being deceived and led by political motives to make appointments, disgraceful to the character of his station?

Again, it is said the governor ought to have some connection or influence over the magistracy of the state, because he is the one to see that the laws of the state are faithfully executed; but can he judge who is capable of administering the laws with justice and propriety between the individuals of this extensive community? Why is all this round-about way taken to come back to the seat of government? Is it that this is the place from whence all offices, small and great, are uniformly to flow? If the nominations are to be made for the people's good, then why send the list to Albany to be ratified?—Why not confide to some body in the county, the power of appointing?

Suppose there should be an union in the nomination of the supervisors and judges—the persons thus nominated will be the candidates whom the governor must commission—then why not give these supervisors and judges the power of appointing? We are told that this will be a salutary means of having the nominations made by one set of men, and the appointment by another man.

But let us imagine who these men are: they are the judges of the court of common pleas, deriving their existence from this chief magistrate; and if political views are to enter into the consideration, it is to be supposed that party men are to be nominated; for your judges may receive their appointment from party motives, and if they are party men, what else can be expected? It would be unreasonable to suppose they will not endeavour to strengthen the chain between these magistrates, if by these means they can sustain themselves in office; experience has shown that such is the fact. I do say, then, that these judges, created as they are, will form the connecting link between the magistrates and your executive. If supervisors are respectable and honest men, as is agreed on all hands, why not let them appoint these officers? This would not do at all it is said: they would then become the very seat of corruption, as was the council which we have abolished. We abolished that council, not because it was originally corrupt, but because the manner in which its powers were carried into operation was corrupt. It was growing worse because we are less pure now than we were when that council went into operation. The same applies to our constitution. As men become more corrupt, it requires something more energetic to restrain them from vice and ambition. It was alleged, that from the manner in which the duties of that council were discharged, it ought to be abolished; and we have done so. If giving this power to the supervisors will corrupt them, it will corrupt any other set of men; and if so, let us throw it

back where it was, as that body is already corrupted. If it must go into other hands, let us endeavour to put it into such hands as we may rationally suppose will be the least likely to abuse it.

Your supervisors are the immediate representatives of the people of their county; and they are accountable for their conduct: they come together bringing all the necessary information for making a discreet selection of magistrates; and inasmuch as they are all personally and collectively interested, they will endeavour to make the wisest and best appointments. I would, therefore, give them the power of nominating and appointing: but I would, at the same time, exclude them from a participation in any other office. One tells us that it will carry party feelings into this body of men; others say it will not be corrupted by party; but I am aware that it is impossible in a government like ours, to prevent party feeling from existing in some degree: we, therefore, have only to place it in the hands of those whom we suppose to be the most upright and intelligent. It is generally conceded that the supervisors are an upright and intelligent body of men; and being immediately accountable to the people, I know of no body of men whom we might more safely entrust with this important charge; but when the judges are added, the responsibility is divided between the supervisors, judges, and executive, and thereby the purity and safety of the plan is destroyed.

Mr. Van Vechten continued his remarks by speaking of the importance of this class of officers, in the management of the pecuniary concerns of their respective towns, as well as in dispensing civil and criminal justice. There was no such connexion between the concerns of the chief magistrate and the justices of the peace, as rendered it important that he should be the person to appoint them.—The chief magistrate was more nearly allied to the militia, as commander in chief, than to justices, still the appointment of these officers had been sent home to the people. From these considerations, with various others which he proceeded to enumerate, he was satisfied that the plan proposed was such as would keep alive party animosity and irritation, and render the engine of political faction more complicated and odious. He should, therefore, vote against the proposition of the gentleman from Otsego.

Judge Platt said, a "*justice of the peace*," in the sense of the constitution, means a judicial officer, with power to bind over or commit for crimes and misdemeanors, and to exact sureties for the peace, or good behaviour. It will be in the discretion of the legislature to clothe him with as much or as little jurisdiction as they please, in regard to civil causes.

From the course of debate on the proposition to make justices elective by the people in the towns, it seems to have been assumed, in the argument, that we are about to adopt a novel principle. We are told, that to elect *judicial* officers, would be an untried and dangerous experiment. Permit me, sir, to remind the Convention, that the fact does not warrant the argument. We have tried the experiment, and with perfect success. I allude to the election of aldermen in all our cities, from the origin of the colony, down to the present day. They have been always elected by the people in the respective wards. They are justices of the peace, *ex officio:* and I ask with confidence, whether that mode of designating those local magistrates, has not been found safe and proper? We have the plain light of experience to guide us; the theory has been reduced to practice, under circumstances most unfavourable to success; and if it be safe and wise to trust the election of those judicial officers to the motley population of our cities; can there be any danger in permitting the like officers to be chosen by the sober and discreet farmers in our country towns? I think not, sir.

The judicial functions of aldermen, are more extensive than the powers of ordinary justices of the peace. Aldermen in the city of New-York are not only conservators of the public peace; they are members of the courts of general sessions and common pleas, and also of the court of oyer and terminer. I have had occasion several times to preside in the oyer and terminer in New-York; at the trial of persons for capital offences, when the aldermen of that city were my associates on the bench. I have found them sensible, discreet, and respectable—they were men with whom I should be proud to associate any where. I

therefore feel a perfect confidence, that there is no real danger in permitting the people of the several towns to elect their own justices, according to the report of the select committee.

Mr. Briggs replied to the suggestion, that the people of this state were incompetent to exercise the power of electing their magistrates. It would seem from the opinions expressed, not only that they were incompetent as electors, but that the moment they exercised that power, all virtue and honesty would depart from the elected. He did not believe that it was necessary to have an intermediate body to protect the people from themselves, nor that they were destitute of those characterestics that constitute discretion. There was no danger that the people would not be guided by their own interest, nor that they would be bewildered in their understandings when they came to the polls.—They were to abide the consequences of their own selection, and if their choice was injudicious, they were the immediate sufferers. The amendment, in his opinion, went to show, that we had no confidence in the people; but he thought that this was an authority with which, of all others, it was most proper to entrust them.

Mr. Sharpe opposed the amendment. He had seen aldermen elected in the city of New-York, and the selections had been uniformly judicious. He believed that the people could be safely trusted. He came here not to subserve party views that were fluctuating and temporary, but to make a constitution for the benefit of his children. He did not know who was to be the next governor, nor did he much care; he would never consent to give to him, whoever he might be, the power of appointment to office as was now proposed. He had, he said, come here to make a constitution without regard to party. He wished not to look at what the operation of any constitutional provision would be, with respect to party.

He was opposed to the proposition under consideration, also, because there would be no responsibility, in case of an abuse of power.

Of the one hundred and twenty-six members of which the Convention was composed, they were mostly all of one political party—a jealousy had existed that they would be influenced by party considerations in their proceedings here. Let us, said he, by our actions, prove the contrary; let us show ourselves magnanimous. There were, he said, but few counties in the state, in which their political opponents had the majority, and he would let them have the local officers of those counties to themselves.

Mr. Van Buren was perfectly willing that the gentleman last up, should show his magnanimity; but that the credit he received might equal his deserts, he would take the liberty to explain the extent of it, farther than the honourable gentleman had done, he would show the height, and breadth, and depth, of the magnanimity recommended; and he hoped he would have ample opportunity, before they got through with this subject, of proving by his votes, the reality of his magnanimity. He would, however, remind him, that the concession he was about to make to his political opponents, would not be limited to a few counties; the proposition was not to elect by counties, but by towns, and for that the gentleman had yesterday voted. By a recurrence to the result of the last spring's election, it would be found, that the honourable gentleman, in the plentitude of his magnanimity, would yield to his political adversaries, if not a majority, certainly a moiety of the whole magistracy of the state. [Mr. S. here interrupted Mr. V. B. and stated that he was perfectly willing that the supervisors of the several counties, or those bodies in conjunction with the courts of common pleas, should appoint the justices. He was opposed to having the appointments made at Albany.] And what, continued Mr. V. B. will you do with the minorities in those counties? Are they to be abandoned? His magnanimity, he said, would not carry him so far. The republican party were predominant in the state, and he did not believe that magnanimity, or justice, required that they should place themselves under the dominion of their opponents. While they continue to be the majority, it was no more than right that they should exercise the powers of the government. That the majority should govern, was a fundamental maxim in all free governments; and when his political opponents acquired the ascendancy, he was content that they

should have it in their power to bestow the offices of the government. It was true, as the honourable gentleman had said, that we had not come here to make a constitution for a party; but it was equally true, that we had not been sent here to destroy one party and build up another. He was not, however, in favour of a system of utter exclusion of the minority. He thought they ought to participate, and he had no doubt they would. He thought it at best but equivocal magnanimity in those who, by their residence, were safe from the control of their adversaries, to disregard the wishes and interests of such of their friends as were differently situated.

Mr. Fairlie stated, that the election of aldermen in the city of New-York, could have no great bearing on this question, inasmuch as they possessed no civil jurisdiction. He thought, however, that it might be expedient to reflect further on the subject before the question, and with that view moved that the committee rise and report. Lost.

Mr. Dodge observed, that the great object with all the members of this body was, that good and suitable men should be selected to fill the offices of justice of the peace. He thought that the practical effect of the plan under consideration would be, that the best men in the community when collected together, would go to the supervisor, and consult with him, and recommend the most proper persons for that office. The same course would also probably prevail in relation to the judges of the county court. Hitherto the nominations have been really made by a caucus assembled in the centre of the various counties, or perhaps by county conventions, which were liable to the same objections: as the selections in both cases were made by political partizans, and with reference to party objects. He was opposed to the election of magistrates, for reasons that had been already stated, and for another which had not been hitherto assigned. It would increase the *number of the elections*—for if a magistrate should move away or die, the people must be assembled from time to time to supply the vacancy. He was also opposed to it, because he thought that uniformity was desirable throughout the state, and it was well understood that distinct appointing powers would be created for the cities of New-York and Albany, even if the general purpose of election by the people should ultimately prevail for the country. If the system of election were adopted, he feared the question of the fitness of the candidate would be made to depend, not upon his qualifications and merit, but upon his popularity and probable success. Mr. D. observed, that the justices' was emphatically the poor man's court, and he should regret to see it placed under the influence of the rich. Suppose a large manufacturer in a town had the control of a hundred votes in the election of a magistrate—what would be the chance for justice of a poor man in a controversy with him? Would you, said Mr. D. permit a suitor to elect exclusively his arbitrators? Certainly not; and yet, by the system of election, you would virtually give effect to that principle, by disposing of the choice of these magistrates to the influence of the rich. Mr. D. further illustrated his sentiments in relation to the subject, and replied to the objections that had been urged against the amendment; and remarked that, believing it to be the least objectionable measure, he should give it his vote.

Chancellor Kent objected to the amendment proposed by the honourable member from Otsego, (Mr. Van Buren.) The supervisors of each county were to propose one list of justices, and the judges of the county court another, and out of these two lists the governor was to select and appoint the justices. How was it possible that the governor at the seat of government could select several thousand magistrates with discretion, when he could have no local knowledge of characters? He would be obliged to elect by ballot or by guess, or if he resorted for advice it would be to men who would communicate it in secret, and who would not be responsible to the community for ill-advice. If he was a governor who stood at the head of a great political party, he would naturally be led to adopt the one list or the other, as would best meet party views and wishes.

There was a great objection, also, in requiring the judges of the county courts to select the justices of the county. He had listened with pleasure to the gentleman from Schoharie, who had just sat down, (Mr. Sutherland,) and who was in favour of the amendment. That gentleman always spoke with can-

dour, moderation, and good sense; but on this occasion, his statement of the objections to the interference of the county courts, and which he endeavoured to surmount, would have been sufficient to have satisfied him, if he had been in doubt before, of the impropriety of calling these courts into political action. The judiciary ought not to be charged with political duties. They should not be distracted or affected in duty or in character by such a concern. The county courts were to be charged by the amendment with a censorial power over the conduct of the justices, and appeals lay to them from their decisions in civil cases. They were therefore an improper body to be concerned in the appointment of justices.

The supervisors were also to form a list for the governor. He should be willing to trust the sole power to them, if no nearer approach to the people themselves in their respective towns, could be admitted. He voted yesterday for electing justices in each town by the people. He thought it upon the whole the most expedient course, and he apprehended the people were as competent to elect discreetly their local magistrates, as the general officers of the state, because it required that minute local knowledge which they alone possessed. It had been the ancient usage in England, as had been observed by the gentleman from Queens, (Mr. King.) It continued to the reign of Edward II.; and Lord Coke referred to it with visible pride, as evidence of the popular genius of the ancient English constitution. He did not recollect that the exercise of that right had been complained of, though the election of sheriffs was stated by the old writers to have been tumultuous. In the city of New-York, the aldermen had always been elected, and well elected, by the people; and they had formerly great civil and criminal jurisdiction: they acted, until 1798, or thereabouts, as police magistrates, and as efficient judges of the mayor's courts. But as that point had been decided by the vote of yesterday, against elections by the people, he would be inclined to prefer the mode approaching the nearest to it, and to adopt the proposition of the gentleman from Westchester, (Mr. Jay,) that the supervisor, assessors, and town clerk in each town, should form the list, or else the supervisors themselves. His great object (and it was one that seemed now to meet the decided sense of the house) was to remove all efficient concern in these local appointments from the seat of government, and to disperse the power among the counties.

Mr. Starkweather. Mr. Chairman—Sir, the principle cause of complaint, by the great body of the yeomanry, against the present council of appointment, has not specifically been mentioned by any gentleman of the committee. It is not because the person appointed, happens to be of different political principles; nor because members of the legislature interfere with the council, and mingle their official duties with political considerations; but because bad men are sometimes appointed, who are in fact a terror to those who do well. The charity and good feeling of the farmers induce them to believe, that the respectable council did not know their private characters; consequently, the electors say, bring the appointments to the people. Sir, by this they do not mean to bring the appointments directly to the ballot boxes; they do not want additional confusion and turmoil there. But, sir, they want a selection made, where the characters of the candidates are known; and if the selection is made by the board of supervisors, and judges of the county court, they must know the character of every man they recommend, and they dare not recommend a bad man—the ghost of public clamour would haunt them in their dreams; and by this mode of selection the people would be safe: it is the best plan that has been suggested, and I shall vote for it. But, sir, let us for one moment consider the plan of an election. It is a fact, that immoral men can bring more votes to the poll, than any moral, good men; and if they are not directly the candidates, they will have their friend for a candidate, and by using their influence, and rallying their satellites, will lay him under obligations to favour them in his official capacity: consequently, a remedy for the evil would not be found here. The gentleman from New-York is opposed to the amendment, because it gives to the executive the appointing power, who is not responsible for the appointments. Sir, I am in favour of giving this power to the executive, because we ask no responsibility from him. He cannot do

wrong, unless he travels out of the two lists of candidates; and this he cannot do, by the amendment proposed. Sir, it has been urged, that no possible good could arise from having the governor appoint and commission the justices of the peace. In answer to this, as the executive is commander-in-chief of the militia, and whose official duty is to see that the laws are faithfully executed, it is highly proper that every commissioned officer should receive his authority from the chief magistrate, and to whom he should be accountable for the faithful performance of his duty.

The question on the amendment offered by Mr. Van Buren, was then taken by ayes and noes, and decided in the negative, as follows:

NOES.—Messrs. Bacon, Baker, Bowman, Briggs, Brooks, Carpenter, Collins, Duer, Edwards, Fish, Hallock, Hees, Hogeboom, Huntington, Hurd, Jay, Jones, Kent, King, Lefferts, A. Livingston, M'Call, Millikin, Moore, Paulding, Platt, Porter, Price, Radcliff, Rhinelander, Rose, Rosebrugh, Sage, Sanders, N. Sanford, R. Sandford, Seeley, Sharpe, I. Smith, R. Smith, Spencer, Stagg, D. Southerland, Sylvester, Tallmadge, Townley, Van Fleet, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Ward, E. Webster, Wendover, Wheaton, E. Williams, Woods, Woodward—58.

AYES—Messrs. Barlow, Beckwith, Birdseye, Breese, Brinkerhoff, Buel, Burroughs, Carver, Case, Child, R. Clarke, Clyde, Cramer, Day, Dodge, Dubois, Dyckman, Eastwood, Fairlie, Fenton, Ferris, Frost, Howe, Humphrey, Hunt, Hunter, Hunting, Lansing, Munro, Nelson, Pike, Park, Pitcher, President, Pumpelly, Reeve, Richards, Root, Ross, Russell, Schenck, Sheldon, Starkweather, Steele, I. Sutherland, Swift, Taylor, Townsend, Tuttle, Tripp, Van Buren, Van Horne, Wheeler, N. Williams, Yates, Young—56.

On motion of Col. Young, the committee then rose, reported progress, and obtained leave to sit again.

THE ELECTIVE FRANCHISE.

The Convention then went into committee of the whole, on the report of the select committee of thirteen, relative to the right of suffrage—Mr. N. Williams in the chair.

The report made yesterday, by Mr. Young, being under consideration,

Mr. Buel moved to amend the section, by inserting after the word "assessed," the words "upon his real or personal estate," so as to preclude any recurrence of the question whether labour on the highways should be considered a tax. Carried.

Mr. Wendover moved further to amend, by erasing the words "the year," in the sixth line, and inserting in lieu thereof the words "two years." He said such a provision would be desirable, particularly in the city of New-York, where there were frequent removals from one ward to another. The question was taken thereupon, and lost.

Gen. Root and Col. Young were respectively about to submit further amendments, when the usual hour of adjournment having arrived, the committee rose, reported progress, and obtained leave to sit again.

Leave was granted to Mr. Jay, to move a reconsideration of the vote taken yesterday, on the question of electing justices of the peace by the people, at a future day, when the consideration of the subject relative to the appointing power, should be resumed in committee of the whole. Adjourned.

SATURDAY, OCTOBER 6, 1821.

The Convention assembled as usual, and after prayers by the Rev. Mr. LACEY, the journals of yesterday were read and approved.

THE ELECTIVE FRANCHISE.

On motion of Mr. EASTWOOD, the Convention resolved itself into a committee of the whole on the unfinished business of yesterday, (the reports on the right of suffrage,) Mr. N. Williams in the chair.

The chairman stated the question for consideration, to be upon the first part of the report of the committee (of thirteen) of which the honourable Mr. Young was chairman.

After a question of order had been disposed of,

COL. YOUNG moved to erase the words 'his real and personal property,' and to insert the word 'him.'

MR. BURROUGHS objected, on the ground that it would authorize the legislature to extend universal suffrage. They would rip up the proceedings of the Convention by a single act.

The question was taken and lost.

MR. NELSON moved to amend, by striking out the words 'and shall have been within the year next preceding assessed upon his real or personal property, and shall have actually paid a tax to the state or county,' and to insert in lieu thereof the words, 'and shall have paid a tax to the state or county within the year next preceding the election, assessed upon his real or personal property.' Carried.

CHIEF JUSTICE SPENCER moved to insert the word 'specially,' after the words 'by law,' to render the provision more explicit. Lost.

MR. BIRDSEYE moved to strike out the words "or shall be by law exempted from taxation," he disliked the principle, it was opening a door for favouritism, and for unjust and odious distinctions. If it should be thought proper to encourage any particular business or calling as useful to the public, it ought to be done by other means than by exemption from taxation.

COL. YOUNG was opposed to striking out—it amounted to nothing more than leaving with the legislature the power to exempt from taxation such persons as they should think proper, and would conduce to the public good. The clergy, he said, were debarred from holding any office, and it was but reasonable that they should have some privileges granted them. The legislature had exempted those serving in artillery companies from taxation ; this had been to encourage that service, because it was supposed the public interest would be promoted by it : So also with regard to manufactories—it might be thought expedient for the purpose of encouraging some of them, to exempt the capital employed from taxation.

MR. BUEL advocated the striking out : his objection to retaining these words was, that it would require a recurrence to oaths, to ascertain who were, or who were not, within the exemption ; and his object would be, to do away all necessity for oaths to determine the qualifications of electors.

MR. BURROUGHS said, the object of the committee was to leave the clergy the same privileges which they had heretofore enjoyed ; he did not know that any difficulty had arisen from their exemption from taxation heretofore—it contributed in some degree to aid the congregations to support their preachers.

MR. ROSS enquired whether there was not some discrepancy between this, and the proviso at the end of the section?

GEN. ROOT said there were three special exemptions by law from taxation—the clergy to the amount of $1,500 were excused from paying taxes. Whenever he had thought of that law, he had thought it unwise, because it was unequal in its operation, and unequal as it respects the relative rights and duties of his fellow citizens. He said any class, however honourable or respectable, being exempted from taxation, would have a tendency to bring about a state of things not very desirable—that of a distinction between citizens. It was, therefore odious, and calculated, by its pernicious example, to make greater distinctions.

Many clergymen will derive no benefit from this provision. There are many whom our assessors, with all their squirming and quibbling, cannot bring within the limits of this exemption. Many of the humble disciples of John Wesley, itinerating the country, will claim no benefit from this exemption; and others too, in humble stations among the clergy, have no property liable to taxation, depending on an annual stipend from their parishioners. He hoped the constitution would be so formed as to lead the legislature to abolish that law.

There was another exemption, of which the honourable president of the Convention had spoken: he alluded to the artillery companies of New-York, who are exempted from taxation, from the circumstance of their having to train oftener than other militia. He would not permit them to vote because they were exempted from taxation, but because they buckle on their armour to fight the battles of their country.

There was another portion of the community exempted from taxation, because they were engaged in manufacturing establishments, which were considered a public benefit; and he called on the chancellor to vote in favour of his proposition: (as he had a few days before, said that these establishments were the seats of corruption, and could bring to the poles of an election an hundred votes at the will of their master) he was aware that a gentleman entertaining such sentiments would vote with him.

The motion was farther supported by the mover, and opposed by Mr. Buel.

Mr. Briggs remarked, that he was opposed to exclusive privileges, whether to the manufacturers or the clergy. If the latter are exempted, why should not deacons be exempted too? They are good men. And why not exempt the carpenter also, who builds the church, and the printer who prints bibles and psalm books? Where should the line be drawn? He wished to shackle the legislature, and prevent them from enacting such laws.

Col. Young hoped the Convention would not descend to legislate upon every little nice point; it would not do to fix any thing but first principles.

The gentlemen from Delaware and Onondaga (Messrs. Root and Birdseye) had expressed great fears that these exemptions would not operate equally. We cannot have any tax distributed equally. With respect to our school fund, is it not the case in every town, that for this fund, money is collected by taxation from wealthy individuals who have no children, to educate other men's children, who otherwise must remain in ignorance? Still, this is a salutary provision. If the exemption of clergymen is productive of public good, by improving the morals, why not sanction it?

During the war it was thought proper to extend patronage to the manufacturers of certain articles, for which we had before thought proper to send our money to Europe. He considered this right and politic. He could not unite in opinion with those gentlemen who had spoken of these manufacturing establishments as being the seats of vice and corruption; for in many of these establishments much attention had been paid to improving the morals by the aid of Sunday schools, &c. and many children had been learnt to read and write, who otherwise must have remained in ignorance and poverty, without such opportunity.

To pretend to shackle the legislature by constitutional embarrassments was nugatory and unavailing. If we prohibit the legislature from exempting them from taxation, they will legislate to give them money which will be equivalent. Our endeavouring to hedge in the legislature, will not answer the purpose; they will get round it some way. He hoped they should not strike out the words.

Mr. Briggs said, if they could not infuse any thing into the constitution which would compel the legislature to make taxation equal, he would by all means avoid doing that which would encourage them to render it unequal.—— He was of the opinion that something might be with propriety done to equalize.

The gentleman from Saratoga had tried to get off, by referring to the inequality with which the school-tax was levied; but this was a subject in which the dearest interests of the community were embarked: education was the very soul of all our republican institutions; and he hoped that patronage might be extended for the promotion of education, till the public mind was raised from its present dejected situation. The question was taken on striking out. Lost.

Gen. Root said, that when he heard the drum beat this morning, the Albany regiment and a battalion of riflemen were then forming near the capitol for review: it reminded him of his motion yesterday; he therefore moved to insert after the word "taxation," in the 9th line, the following words, "or being armed and equipped according to law, shall have performed within that year military duty in the militia of this state."

Gen. J. R. Van Rensselaer said, if the gentleman from Delaware would consent to wait a moment, he would offer an amendment which he then held in his hand.

Gen. Root. What is it?

Gen. Van Rensselaer. As follows: after the word "assessed," insert the words, "upon real or personal estate to an amount not less than dollars."

Mr. Root. Oh! I can't wait for that—it will certainly be rejected.

Mr. Root, in support of his motion, remarked, that young men coming of age after the assessment came out, and before October, would not be provided for by the other provisions of the report, until they were more than twenty-two years of age.

There was another exception with respect to those who ought to vote—such as emigrated from New-England or elsewhere. They must remain three years, unless they have been put upon the assessment roll, even though they had performed militia duty, which was in itself a very heavy tax upon a poor man.

Mr. Sharpe said, he had voted for the militia qualification on a former occasion, and he should do so again. Without this qualification the operation of the system would be unequal, there were very many worthy citizens in the city of New-York, who would not come within any of the other qualifications.

The militia of that city, he said, were not of the degraded character, that some gentlemen seemed to suppose; a very great proportion of them were young men of great respectability; merchants' clerks, and mechanics—they were not taxed—and in that city they had no highway tax. And they would all therefore be excluded from voting, if this amendment did not prevail.

Col. Young was not alarmed by any fear of permitting those to vote who performed military duty: but he thought the instances would not be more than one hundred annually in the state who would not come within the other provisions contemplated by the report.

Mr. Fairlie wished that the order of the question might be reversed. He was opposed to the principle of allowing the performance of highway labour as a qualification to vote; but if that should be so decided, he should be prepared to extend that privilege to the militia.

Mr. Radcliff was opposed to the motion, and hoped that the military and highway qualifications would both be expunged.

Gen. Root was of the opinion that the honourable chairman of the select committee, (Mr. Young) could not have made much calculation, when he said that not more than a hundred or two would be affected by this provision. From an estimate which he had made, knowing the number of voters in the state would be from two to three hundred thousand, he found that there would annually come of age about four thousand, and within the first six months after the tax list was made out, about two thousand, who would, without this provision, be excluded from a participation in the right of suffrage, because they had not paid taxes. By my proposition, should it be adopted, they will, in consideration of having done military service from the age of eighteen to twenty-one, be entitled to come forward at the polls of your election. These too are young men who have not become so proud and haughty as to disdain going out to the parade; they can associate with their fellow young men, and feel a pride and dignity in the high station of militiamen. Exertions are now making to deprive two thousand young men in this way from this inestimable privilege, as well as great numbers of the sons of emigrants. But, says the gentleman from Saratoga, the number of emigrants to this state now is very small; they all pass through our state to others in the west. I know they do not emigrate to Saratoga; but there are vast numbers who emigrate to the western states, and return to settle in

the western borders of our state, and some who stop in the county where I reside.

The number to be affected by this provision cannot be correctly ascertained, but it is without doubt very considerable. As to the number in New-York, I will leave it for those who represent that city to determine—And in this city, how many young men are there on this day marching under the banner of their country, who will be for years deprived of the right of suffrage, but for the amendment which I now offer! Who are these young men who are serving in your militia? They are young men whose patriotic bosoms burn with a love country; and will they vote from the dictation of the petty lordlings of the day? No; they will vote for the good of their country, which they are now preparing to defend—they will not vote for peace party men, but for men that are willing to bare their breasts to the arms of the enemy. These are the young men that I want to bring to the polls of our election—Young men that will vote for the man that will lead them in the hour of danger to the field of battle. Yes, men that, when a restless mob shall excite commotion, will willingly be led forward to suppress the insurrection—friends of order and of law, but not of aristocracy. Not one out of ten of these young militiamen would vote for a haughty, proud, and domineering aristocrat;—they will vote for *republicans.*

Mr. Briggs said he hoped the Convention would do right.

Mr. Wheeler remarked that he had heard a sombre picture of the depravity of our cities, and he was now happy to learn that their moral condition was improving. Being satisfied that the alarms excited the other day respecting that diseased population were unfounded, he should vote for the amendment.

The question was then taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Barlow, Beckwith, Birdseye, Brinkerhoff, Buel, Burroughs, Carpenter, Carver, D. Clark, R. Clarke, Clyde, Collins, Day, Dodge, Dubois, Eastwood, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunting, Hurd, Lefferts, A. Livingston, M'Call, Moore, Nelson, Park, Pike, President, Price, Pumpelly, Radcliff, Richards, Root, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seaman, Seeley, Sharpe, Sheldon, I. Smith, Starkweather, Steele, D. Southerland, Swift, Tallmadge, Taylor, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Ward, E. Webster, Wendover, Wheeler, Young—67.

NOES—Messrs. Bacon, Bowman, Briggs, Child, Duer, Dyckman, Edwards, Fairlie, Fish, Hees, Huntington, Jay, Jones, Kent, King, Lansing, Lawrence, Munro, Paulding, Platt, Rhinelander, Rose, R. Smith, Spencer, Stagg, Sylvester, Van Horne, Van Ness, J. R. Van Rensselaer, Van Vechten, Wheaton, E. Williams, Woods, Woodward—34.

Gen. J. R. Van Rensselaer then introduced his amendment, as stated above, and supported the same at length.

The object he said, of the proposed amendment, is to require that the electors should possess some small portion of property, which is to be subject to contribution for the support of government, and to exclude from a participation in its administration that portion of citizens of this community, who feel no interest in its welfare, and who do not afford it any aid. There is in every community, a portion of idle, profligate, and abandoned men; and it is unjust and impolitic, that this description of people should have it in their power to control the government and the property of the industrious, the virtuous, and moral part of the community. The object of all good governments, is the protection of life, liberty, and property. The two first, are always safe, under a government of laws, because no laws can be passed which shall operate partially as to them. All will be protected or injured alike by any general provision; but the introduction of universal suffrage, would operate unequally as it regards the latter object, because it would afford to him who possesses no property, who has none to be affected by any law which may be enacted, as much political power as the freeholder or farmer who contributes from ten to fifty dollars per year towards its support. The farmers and mechanics who own portions of property procured by the practice of all the moral virtues, are uni-

formly and constantly bound to afford support and protection, in peace and in war, to your government—in times of peace by contributions in money, and in war by their personal services also; while the first description of persons never afford either. Whenever their situation can be improved, they emigrate to some other state, or evade the operation of your laws: as mere mercenaries they sometimes enter your armies and fight your battles, but seldom, if ever, from any higher motive than the mere pecuniary consideration they receive—While the farmer, whose property is always visible, always bound to contribute according to the value, to the support of government, is fastened to the soil almost as much as the oak, whose roots have penetrated it—and in the proportion as the measures of your administration are bad and injurious, the more is his difficulty of escaping their effects increased. The effect and operation of this widely extended suffrage, would be but partially felt, were the whole population of the state composed of farmers and ordinary mechanics, as the influence of the parent would be exercised over the son, and all would feel an immediate interest in the prosperity, and welfare of their country. But the case of this state is wisely different from this. Already have we in the city of New-York, about one tenth of the whole population of the state. And the argument that because this relative proportion has been maintained for the last thirty years, it will be continued through all time, is altogether fallacious and erroneous. At that period, the foot of the white man had scarcely trodden the soil more than thirty or forty miles west of the Hudson, except on the banks of the Mohawk, and in a very few small settlements in its vicinity. The western parts of this state, vast in extent, and fertile almost without a parallel, has within that period been settled by emigrants from New-England, from other sections of the union, and from Europe; and that portion of the state, then a wilderness, now contains one half of its present population. That district of country is already so much peopled, that its relative progressive increase must necessarily diminish, while that of the cities, towns, and villages, must as certainly increase. And, it is not indulging too much in prophecy to state with confidence, that these within half a century, will contain a full moiety of our whole population. The growth of a commercial city must always depend beyond its foreign commerce, upon the country with which it is connected in the purchase of its products and the sale of foreign commodities. New-York now enjoys a greater portion of the foreign commerce of the United States, than any other city of the union. Its coastwise commerce is constantly increasing. It is emphatically the ware-house of the union. Formerly its internal commerce was confined to portions of the adjoining states, and that part of our own which borders on the Hudson. Already, by means of the northern canal is that commerce extended to the whole of Vermont, and a portion of the Canadas; and whenever a water communication shall be opened between Lake Champlain and the St. Lawrence, all the business of Quebec will be transferred to New-York, except only the direct intercourse between the former and the West India Islands.

But, great as is, and will be the accession of business and of wealth, from these sources, they dwindle into perfect insignificance, and are scarcely worth noticing, when compared with the effects which will be produced by a completion of the western canal. There a direct communication will be opened with Ohio, part of Kentucky, Illinois, Indiana, Michigan, Missouri, and all the upper part of the province of Upper Canada, and her increase will be proportioned, not the population of this state alone, but in a great degree to the whole of that territory, which, in all probability, and in the course of human events, will in little more than half a century, contain from 12 to 15,000,000 of souls.

The population of the city of New-York, compared with the old settled parts of the state, has, within the last seven years, been in the proportion of seven to four, or nearly two to one; and the effect of allowing every male citizen of twenty-one years of age to vote, by the introduction of universal suffrage, will be to increase her relative political importance in the ratio of about six to one. In the year 1814, the whole freehold population of the southern district of this state, comprising the counties of Suffolk, Queens, Kings, Richmond, New-York, Westchester, Putnam, and Rockland, amounted to 16,936, of which 13,79[illegible]

were in the country counties; and 3141 in the city of New-York, being in favour of the country as four to one. The whole free male adult population, amounted to 45,542, of which 27,542 were in the country, and about 18,000 in the city—and the total population was 236,557—141,038 in the country, and 95,519 in the city; leaving a balance in favour of the country of 45,519. In 1820, the total population of the same district was 296,177. The country 162,471, and New-York 123,706—difference 38,765. The whole male population over twenty-one years, about 58,782—of which about 31,782 are in the country, and about 27,000 in the city—while the country part of that district has increased in the ratio of about one to seven. New-York has increased as one to four, and were the enquiry carried to every portion of the old settled part of the state, the same result would appear; and hence the manifest injustice of establishing any rule which will produce so material and so manifest a disproportioned increase of political power.

Permit me to ask, sir, whether the fear that with the provisions contained in the article under consideration, in times of strong party excitement, men may be found who will extend the right of suffrage to this vast mass of combustible matter in the city of New-York, is altogether chimerical? We have heard a gentleman holding a high and dignified station in this country, openly on the floor of this assembly, avow, that during the seventeen years he was a member of the council of revision, and governor, (alluding to the president of Convention) he was actuated by party motives and considerations in the discharge of his official duties, and can we then doubt that men of less consideration, and in more humble walks of life, will be influenced by like motives and considerations? [Here the President interrupted Mr. V. R. and denied having said that he ever in the discharge of his official duties, was governed or influenced by party motives, or considerations—but that as he was subject to the frailties and infirmities of human nature, he might unconsciously have been under their influence.] Mr. V. Rensselaer said, that if the President had heard him out, he would have discovered that he did not intend to impute to him corrupt motives.

His argument would be strengthened by admitting, that, acting under the influence of these considerations, he still felt himself honest—still retained the approbation of his own conscience. Cases had frequently occurred when honest men, in the discharge of their public duties, considered themselves bound to subserve the party views of the day, as the means necessary for the protection and promotion of the best interests of their country; and he would only mention one case, which had been referred to in debate. He alluded to the late war, when the dominancy of the republican party was, by that gentleman, deemed essential to the salvation of his country; and he would, therefore, of course, do every thing in his power to preserve the ascendancy of that party. The time may, therefore, and probably will arrive, when party assessors will place on the tax lists that population which possesses neither property, independence, virtue, nor political integrity, merely to subserve the views of party; that kind of population, thus formed and condensed, always has been, and ever will be, under the control and the influence of the artful, the cunning, the aspiring, and ambitious demagogue.

The experience of all countries has proved, that as cities grow in numbers, and in wealth, and luxury, as population becomes dense, and the difficulty of procuring the means of subsistence, increases, does the proportion of the poor, the wretched, and the vicious, compared with their opposites, also increase; and it would be unwise in us to calculate on a different course of things here. It is certain, that while the city of New-York contains in a certain portion of her citizens as much virtue and more wealth, more talent, more refinement, and literary acquirements, than any other part of the state of equal numbers; she also contains a greater portion of ignorance, wretchedness, misery, and vice. All great cities are places of refuge for the idle and vicious. They are there more effectually screened from detection in their favourite pursuits than elsewhere. This state is destined by nature to be great in her commercial and manufacturing interests. As the latter increase, so also will increase the number of those dependant on their employers.

It has been observed, that property will always retain its influence, and that

the wealth of the manufacturer will be as much a subject of solicitude, and of protection, as that of the farmer. It is this influence of property which I dread, as the source of great evil to the state. The distribution of property in small portions among the citizens generally, and the uniform and equal influence of property thus distributed, is the very basis upon which our republican institutions rest. Its possessors are moral in their habits, moderate in their desires, free from personal ambition, and a desire of political elevation. In humble and persevering industry, they endeavour to provide for the support of their families and government, and are alike incapable and unfitted for political intrigue or combinations. Suppose a manufactory established, with a capital of $100,000,—it is probably fair to presume, that each $1000 will give employ to one man, each of whom constantly and uniformly dependant for his subsistence on the owner of the establishment, soon looses all independence of mind, and yields himself to the views, the wishes, and desires of the individual from whom he receives his bread. This property then becomes in reality the representative of one hundred and one votes, and then suppose twenty farmers in the vicinity, each worth in real and personal property $5000, and that each has one man constantly and habitually dependant on him, and suppose, further, that they all entertain the same views hostile to the manufacturer—they possess only two-fifths of the political power and influence of the manufacturer, and thus it will appear, that it will require a combination of fifty such farmers, to meet and paralize his views and efforts. Sir, no government, embracing considerable extent of territory, with a numerous and dense population, ever enjoyed the blessings of government with universal suffrage. The property of the rich has always been, and always will be, an object of desire on the part of the poor, and whenever they possess the power they will gratify their desires by its distribution. We have been told, that the governments of France and Great Britain, containing vastly greater portions of the idle, the vicious, and the profligate, than ours, are able to protect property, to suppress insurrections, and keep the mob in awe; and hence it is inferred, that those governments might safely intrust the whole people with political power. But the proper inference is precisely the reverse. Were either of those governments to extend the right of suffrage to all her subjects and make it universal, rely upon it, a very short period of time would only elapse, before they would be possessed of the sword and the purse of the nation, and their power would be used for the destruction, not the preservation, of those rights deemed essential to public and private prosperity, and happiness. A gentleman from Dutchess, (Mr. Livingston) has informed you that at the commencement of the French revolution, two-thirds of the property of that nation was in the possession of the nobility and clergy,—that that revolution, by procuring the confiscation of all that property, and its distribution among those who previously had none, was one of the most fortunate events—one of the greatest political blessings which ever visited any nation. That revolution was produced by violent commotion and blood—by an hostile array of power against law and government. Can any man doubt, that if that mob, which violated all law, and the dictates of humanity—which bathed their hands in pure, in virtuous, and innocent blood for the attainment of their object—would not under the form of law—if they had possessed the reins of government, have produced the same result. And can any one, at all experienced in the knowledge of man, believe, that the same causes will not produce the same effects here, as in Europe. Man has been, and probably always will be, subject to the same passions and feelings; and, under like circumstances, the future will strongly resemble the past. And it is, therefore, the province of prudence and of wisdom, by some slight property qualification for electors, to exclude those from a participation in the political power of this government, who have nothing to lose by the enactment of bad laws, and who may feel perhaps too strong a desire to violate private rights for the gratification of their cupidity.

Mr. Briggs. We have come to universal suffrage, sir, and I want we should fix it in the face of the instrument, sir. Gentlemen wish to get away from it, they endeavour to evade it, sir. This distinction will help to weaken the breach. When we get to have such a population, as the gentlemen have de-

scribed, our constitution will be good for nothing, sir. We must carry the strong arm of the law to the cradle, sir, and let the rising generation know that we have established the principle of universal suffrage, sir, that they may prepare themselves accordingly, and qualify themselves to live under it, sir.

Mr. Fairlie was not in favour of universal suffrage, but he thought the committee had gone so far, that it was hardly worth while to attempt to save the remnant. He had been greatly edified by the excellent *discourse* of the gentleman from Columbia (Mr. Van Rensselaer) although he feared the gentleman had mistaken the brief he intended to use, as his observations appeared to apply to a question that had been fully settled several days ago.

The city of New-York he thought was *not quite* so bad as the gentleman represented. As it was larger than other places, so it contained more vice, in the same proportion. In like manner, it was probable that the city of Hudson contained more vice than the village of Kinderhook.

Gen. Root wished to know the views of the mover in relation to filling the blank.

Gen. Van Rensselaer proposed to fill it with the sum of fifty dollars.

Col. Young opposed the motion. He observed that when our present constitution was formed, the mass of real estate in this state was much more unequally divided than at present. These subdivisions continue to increase. Was it expedient, then, to admit the man to vote who possesses $50 worth of property, and to refuse the man who has only $49? He thought that property was not a correct standard for the limitation of the right of suffrage.

After further observations on the subject, by Messrs. Van Buren, Fairlie, J. R. Van Rensselaer, Sharpe, and Starkweather, the question was put and lost.

Mr. Birdseye then moved to amend the first line of the section, by inserting after the word "every," the word "free." Lost.

Mr. Briggs moved to amend in the same place, by inserting the word "white." He said that it had been substantially decided by the Convention, that property was not the standard of qualification for a vote. Of course it ought not to be so, with respect to the blacks, any more than the whites. He was therefore opposed to the proviso, and wished to insert this provision in its stead.

Col. Young was in favour of the motion.

Chancellor Kent was opposed to the motion of the gentleman from Schoharie, and in favour of the proviso reported by the committee. He had already expressed his sentiments on this subject, and he should not trouble the committee with a repetition of them. It was true, that the blacks were in some respects a degraded portion of the community, but he was unwilling to see them disfranchised, and the door eternally barred against them. The proviso would not cut them off from all hope, and might in some degree alleviate the wrongs we had done them. It would have a tendency to make them industrious and frugal, with the prospect of participating in the right of suffrage.

Mr. Van Buren was in favour of the plan proposed by the select committee, and opposed to the amendment.

Mr. Sharpe remarked that the report of the select committee proposed to make the blacks a privileged order, inasmuch as they were not liable to pay taxes, in certain cases, and were exempted from the performance of jury and military service. It was, therefore, but fair that some privileges should be withheld as an equivalent for these exemptions.

Mr. Briggs wished to make the constitution consistent in all its parts. The black man was a degraded member of society, and would, therefore, be always ready to sell his vote; nor would real estate make him a better man. The whites can never take them to their bosoms.

Gen. Tallmadge was opposed to the motion. He was prepared to vote for the proviso which the committee had reported, because he considered it as a compromise of conflicting opinions. He also thought it held out inducements to that unfortunate class of our population to become industrious and valuable members of the community.

Mr. Jay said, this subject had already been fully discussed, and once dis-

posed of by the Convention; and he had hoped that it would not again be made a question for debate. It was not his intention to revive the discussion of it; and he rose merely to make some reply to the remarks which had fallen from the gentleman from Schoharie, (Mr. Briggs.) He could wish that gentleman had assigned some reasons why persons of colour might not be as intelligent and virtuous as white persons. Had nature interposed any barriers to prevent them from the acquisition of knowledge, or the pursuit of virtue? It was true they were now in some measure a degraded race; but how came they so? Was it not by our fault, and the fault of our fathers? And because they had been degraded, the gentleman from Schoharie was for visiting the sins of the fathers upon the children, and for condemning them to eternal degradation. He could not but think there were too many unfounded prejudices; too much pride of democracy on this subject. However we may scorn, and insult, and trample upon this unfortunate race now, the day was fast approaching when we must lie down with them in that narrow bed appointed for all the living. Then, if not before, the pride of distinction would cease. There the prisoners rest together; they hear not the voice of the oppressor. The small and the great are there; and the servant is free from his master. In commingled and undistinguished dust we must all repose, and rise together at the last day. God has created us all equal; and why should we establish distinctions? We are all the offspring of one common Father, and redeemed by one common Saviour—the gates of paradise are open alike to the bond and the free. He hoped the committee would never consent to incorporate into the constitution a provision which contravened the spirit of our institutions, and which was so repulsive to the dictates of justice and humanity.

Mr. Buel said it was not correct, as had been suggested on a former day by the honourable gentleman from Saratoga, (Mr. Young,) that no provision for the exclusion of the blacks had been made by the framers of our constitution, because they were then so few and inconsiderable as to have been overlooked by them. It would be found that as long ago as 1730, a special law of this state was enacted to prevent the concealing of slaves. Statutes had been made on the same subject down to the time of the revolution, which evinced that the people of this state were not ignorant of the tendency or extent of the effect and progress of emancipation. In the period of the revolutionary war, a statute had been passed for the encouragement of enlisting blacks into the service, which provided that at the expiration of three years the slave should be entitled to his freedom, and the master to the military bounty.

He had previously suggested the difficulty of discrimination which would arise from such a provision. Philosophers had distinguished the human race by five colours, the white, black, brown, olive, and red. By the amendment, four of the races would be excluded. In the West Indies a man became white *according to law*, when only one sixteenth part of African blood ran in his veins. These questions might lead to unpleasant elucidations of family history, and ought to be avoided.

Col. Young replied to the observations of Mr. Buel, and admitted that the theory of philosophers might be correct; but he contended that in forming a constitution, reference was to be had, not to speculation, but to the common sense of mankind. That would sufficiently direct, who were to be admitted, and who were to be excluded, by such a general provision.

Mr. Briggs made three unsuccessful efforts to take the floor.

Messrs. Ross and R. Clarke addressed the committee on the subject, when

Mr. Briggs replied to the objections that had been raised by the honourable gentleman from Westchester, (Mr. Jay.) That gentleman had remarked that we must all ultimately lie down in the same bed together. But he would ask that honourable gentleman whether he would consent to lie down, in life, in the same feather bed with a negro? But it was said that the right of suffrage would elevate them. He would ask whether it would elevate a monkey or a baboon to allow them to vote? No, it would be to sport, and trifle, and insult them, to say they might be candidates for the office of president of the United States. But gentlemen whose opinions he respected, had advised him to withdraw his motion, and therefore he withdrew it.

The question was then taken on the first part of the section, as amended, in the following words:

"Every male citizen of the age of twenty-one years, who shall have been one year an inhabitant of this state preceding the day of the election, and for the last six months a resident of the town, county, or district where he may offer his vote, and shall have paid a tax to the state or county within the year next preceding the election, assessed upon his real or personal property; or shall be by law exempted from taxation."

A division having been called for, it was decided by ayes and noes, as follows:

AYES—Messrs. Bacon, Barlow, Beckwith, Birdseye, Bowman, Breese, Briggs, Brinkerhoff, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Collins, Cramer, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Huntington, Hurd, Jay, Jones, Kent, King, Lansing, Lawrence, Lefferts, A. Livingston, M'Call, Moore, Munro, Nelson, Park, Paulding, Pike, Porter, President, Price, Pumpelly, Radcliff, Rhinelander, Richards, Rose, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seaman, Seeley, Sharpe, Sheldon, I. Smith, R. Smith, Spencer, Stagg, Starkweather, Steele, D. Southerland, Swift, Sylvester, Tallmadge, Taylor, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, Van Ness, Van Vechten, Ward, E. Webster, Wendover, Wheaton, Wheeler, E. Williams, Woods, Young—114.

NOES—Messrs. Platt, J. R. Van Rensselaer—2.

The next division of the section relative to the qualification by military service, having been already decided by ayes and noes, was passed over; and the question in order, was on the part of the section expressed in the words following:

"And also, every male citizen of the age of twenty one years, who shall have been, for three years next preceding such election, an inhabitant of this state; and for the last year a resident in the town, county, or district, where he may offer his vote; and shall have been, within the last year, assessed to labour upon the public highways, and shall have performed the labour, or paid an equivalent therefor, according to law, shall be entitled to vote in the town or ward where he actually resides and not elsewhere, for all officers that now are, or hereafter may be, elective by the people."

Mr. Bacon said that he was opposed, as he had alone been in the select committee, to the qualification now proposed, on general principles, and as he had also been to that founded on militia service. The latter had, however just been adopted by a large majority; and after admitting all who could be admitted under that qualification, as it would undoubtedly be executed in practice, he could see little else left that was worth a serious struggle for, since the present proposition would only admit a few more who were over the age of forty-five, and consequently not enrolled in the militia; and they would probably be as good voters, as those who were under that age. We had, also, by adopting the militia qualification, given to the city of New-York an additional disposable force of many hundred electoral votes, and it might be well to over balance this weight, by this highway qualification, which will not add any thing to the city list, while it may give us some small addition in those parts of the country where the militia qualification may be strictly executed. While the latter, therefore, is retained, we should vote for the former as connected with it,—reserving, however, his vote against the whole, when that question shall be taken.

Mr. Van Buren said, that as the vote he should now give on what was called the highway qualification, would be different from what it had been on a former occasion, he felt it a duty to make a brief explanation of the motives which governed him. The qualifications reported by the first committee, were of three kinds, viz: the payment of a money tax—the performance of military

duty, and working on the highway. The two former had met with his decided approbation; to the latter he wished to add the additional qualification, that the elector should, if he paid no tax, performed no militia duty, but offered his vote on the sole ground that he had laboured on the highways, also be a *house-holder;* and that was the only point in which he had dissented from the report of the committee. To effect this object, he supported a motion made by a gentleman from Dutchess, to strike out the highway qualification, with a view of adding "*house-holder.*" That motion, after full discussion, had prevailed by a majority of twenty. But what was the consequence? The very next day, the same gentlemen who thought the highway tax too liberal a qualification, voted that every person of twenty-one years of age, having a certain term of residence, and excluding *actual* paupers, should be permitted to vote for any officer in the government, from the highest to the lowest—Far outvieing, in in this particular, the other states in the union, and verging from the extreme of restricted, to that of universal suffrage. The Convention, sensible of the very great stride which had been taken by the last vote, the next morning referred the whole matter to a select committee of thirteen, whose report was now under consideration. That committee, though composed of gentlemen, a large majority of whom had voted for the proposition for universal suffrage, had now recommended a middle course, viz—the payment of a money tax, or labour on the highway, excluding militia service, which had, however, been very properly reinstated. The question then recurred; shall an attempt be again made to add that of house-holder, to the highway qualification, and run the hazard of the re-introduction of the proposition of the gentleman from Washington, abandoning all qualifications, and throwing open the ballot boxes to every body—demolishing at one blow, the distinctive character of an elector, the proudest and most invaluable attribute of freemen?

Mr. Van Buren said, he had, on the motion of the gentleman from Columbia, this day hinted at the numerous objections which he had to the proposition, which the other day passed the Convention, in regard to the right of suffrage: objections which he intended to make, had the committee reported in favour of that vote; and by which, when fully urged, he knew that he would be able to convince every member of this committee of the dangerous and alarming tendency of that precipitate and unexpected prostration of all qualifications. At this moment, he would only say, that among the many evils which would flow from a wholly unrestricted suffrage, the following would be the most injurious, viz:—

First. It would give to the city of New-York about twenty-five thousand votes; whilst, under the liberal extension of the right on the choice of delegates to this convention, she had but about thirteen or fourteen thousand. That the character of the increased number of votes would be such as would render their elections rather a curse than a blessing: which would drive from the polls all sober minded people; and such, he was happy to find, was the united opinion, or nearly so, of the delegation from that city.

Secondly. It would not only be injurious to them, but that injury would work an equally great one to the western and northern parts of the state. It was the present consolation of our hardy sons of the west, that, for their toils and their sufferings in reducing the wilderness to cultivation, they were cheered by the conviction, not only that they would be secure in the enjoyment of their dear bought improvements, in consequence of their representation in the legislature, but that any increase of that represention gave them a still greater influence there. That as far as it respected this state, their march, and the march of empire kept pace. This arose from the circumstance of the representation in the state being founded on the number of electors; and because almost every man in a new country was an elector, under the existing and contemplated qualifications: whilst in the old counties, and especially in cities, there were great numbers who would not be embraced by them. So great was this effect, that the city of New-York alone would, under the vote of the other day, have become entitled to additional voters, over those who voted at the election of delegates, equal, or nearly so, to the whole number of votes of Ontario or Genesee. The direct consequence of which would be, that the additional repre-

sentation of fourteen members, which are next year to be distributed among the counties, would, instead of going principally to the west, be surrendered to the worst population of the old counties and cities.

And thirdly, The door would have been entirely closed against retreat, whatever might be our after conviction, founded on experience, as to the evil tendency of this extended suffrage.

The just equilibrium between the rights of those who have, and those who have no interest in the government, could, when once thus surrendered, never be regained, except by the sword. But, according to the present report, if experience should point out dangers, from the very extensive qualifications we were about to establish, the legislature might relieve against the evil, by curtailing the objects of taxation. By the establishment of turnpikes, the making of canals, and the general improvements of the country, the highway tax would naturally be lessened, and might, if the legislature thought proper, be hereafter confined to property, instead of imposing it, as they now do, on adult male citizens. For one hundred years at least, this would afford a sufficient protection against the evils which were apprehended. He would, therefore, notwithstanding his desire to have the qualification of *house-holder* added to the electors of the third description remained unchanged, accept the report of the committee as it was, with the addition of the military qualification, which he thought ought to be adopted, for the sake of principle, if for no other reason.

He thought the committee, constituted as they were, had done themselves great credit by their concession to the opinion of those from whom they differed, and he, for one, returned them his sincere thanks. Under all circumstances, he would be well satisfied with the right of suffrage, as it will now be established, and would give it his zealous support, as well in his capacity of delegate, as that of citizen.

Mr. Radcliff. He had voted on a former occasion, for striking out the highway tax. He had afterwards voted for the proposition of the gentleman from Washington. He had done so, because by the previous qualifications they had gone so far, that he supposed it best, to save all dispute about who were entitled to vote, to adopt a rule about which there could be no dispute. The select committee had now reported, to add to the proposition of the gentleman from Washington, the assessment of highway tax; this would operate very unequally. In the city of New-York, they had no such tax, and none would be admitted to vote, under this last clause, who were not embraced in the former. He would therefore move to strike out the words "and shall have been, within the last year, assessed to labour upon the public highways, and shall have performed the labour, or paid an equivalent therefor, according to law."

The motion of Mr. Radcliff was supported by the mover, and Mr. Sharpe, and opposed by Messrs. Spencer, Young, and Burroughs, when the question was taken by ayes and noes, and decided in the negative as follows:

NOES—Messrs. Beckwith, Birdseye, Bowman, Breese, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dodge, Dubois, Duer, Eastwood, Edwards, Fenton, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunting, Huntington, Hurd, Jay, Jones, Kent, Lansing, Lefferts, A. Livingston, M'Call, Moore, Munro, Nelson, Park, Paulding, Pike, Pitcher, Porter, Platt, President, Price, Pumpelly, Rhinelander, Richards, Root, Rosebrugh, Ross, Russell, Sage, R. Sandford, Schenck, Seeley, Sharpe, Sheldon, R. Smith, Spencer, Stagg, Starkweather, Steele, Swift, Tallmadge, Taylor, Townsend, Tuttle, Van Buren, Van Fleet, Van Ness, Ward, E. Webster, Wendover, Wheaton, Wheeler, E. Williams, Woodward, Young—86.

AYES—Messrs. Bacon, Barlow, Briggs, Dyckman, Fairlie, King, Lawrence, Radcliff, N. Sanford, Seaman, I. Smith, S. Van Rensselaer, Van Vechten, Woods—14.

Mr. Buel then moved to amend by striking out all that part of the section under consideration which is included between the words "and also," in the ninth line, and the words "according to law," in the thirteenth line, inclusive.

The ayes and noes having been required thereon, the question was taken, and decided in the negative, as follows:

NOES—Messrs. Bacon, Barlow, Beckwith, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Day, Dodge, Dubois, Dyckman, Eastwood, Fenton, Ferris, Fish, Frost, Hallock, Hees, Howe, Humphrey, Hunt, Hunting, Huntington, Hurd, Lansing, Lefferts, A. Livingston, M'Call, Moore, Nelson, Park, Pike, Pitcher, President, Price, Pumpelly, Radcliff, Richards, Root, Rosebrugh, Ross, Russell, Sage, N. Sandford, R. Sandford, Schenck, Seeley, Sheldon, I. Smith, R. Smith, Starkweather, Steele, D. Southerland, Swift, Tallmadge, Taylor, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Ness, Ward, E. Webster, Wendover, Wheeler, E. Williams, Woodward, Young—77.

AYES—Messrs. Birdseye, Bowman, Buel, Duer, Edwards, Fairlie, Jay, Jones, Kent, King, Lawrence, Munro, Paulding, Platt, Porter, Rhinelander, Seaman, Sharpe, Spencer, Stagg, Van Horne, S. Van Rensselaer, Van Vechten, Wheaton, Woods—26.

The question was then taken upon the whole of that part of the section as before presented and carried.

The *Proviso* was next in order.

Gen. Root moved to rise and report. He hoped they would not (it being 3 o'clock) take up the negroes upon an empty stomach.

Mr. E. Williams was opposed to the motion for rising and reporting. He said that the history of the week would show that it was inexpedient to rise and report until questions were settled. Day after day we had heard the same arguments, and the same language too, repeated verbatum three or four times over. The repetition of the same words might be very edifying to the speakers, but were tedious and sickening to the hearers. He hoped therefore that the committee would not rise.

The motion to rise and report was lost.

Mr. R. Clarke moved to strike out the words " subject to taxation, or" in the 23d line of the proviso, lost.

Mr. Bacon said that he objected to this mode of excluding the black population from voting, because, in the first place, it was an attempt to do a thing indirectly which we appeared either to be ashamed of doing, or for some reason chose not to do directly, a course which he thought every way unworthy of us. This freehold qualification is, as it applies to nearly all the blacks, a practical exclusion, and if this is right, it ought to be done directly. By the adoption of this too, we involved ourselves in the most obvious inconsistency, declaring thereby, that although property either real or personal, was no correct test of qualification in the case of a white man, it was a very good one in that of a black one, that although as gentlemen had maintained it conferred neither talents, integrity, or independence on the one, it imparted them all to the other. If we were determined to exclude them at all, it would be more correct and honourable to do it directly. In relation to that general question he would take this opportunity for the first time, to explain, in a few words, his general views. He had as little fondness as any one for either legislating or forming systems of government wholly upon those general sweeping theories of the universal and inaliable rights of man, of which we have heard so much here,—and whoever attempted to bottom all his measures upon any general theories, without alluding to the practical limitations and exceptions to which they were always subject, shewed himself a very crude statesman, and a rash and dangerous legislator. One of our first general principles is, that we recognize no distinct casts or orders of men, having distinct and fixed personal or political rights,—and nothing but a strong political necessity can authorise a violation of this principle, could it be made to appear that any such necessity existed in the present case, he would not hesitate to yield to it. But what are the facts adduced to make out such a case? The documents before us shew an entire black population of hardly forty thousand of all ages and sexes, both slaves and free, scattered through a white population of nearly a million and a half; and that so far from the former gaining upon us, it has for the thirty years past sensibly diminished when compared with the latter. Whence then the apprehended danger, when an experience of forty years has brought with it none? The exclusion from the right of suffrage, of aliens, of females and others, allud-

ed to by a gentleman from Saratoga, all stand on grounds of public safety, or high political inconvenience. The exclusion of the blacks from militia duty and from juries, is founded only on considerations of feeling and of taste in the whites, and adopted for the sole convenience of the latter, but it is not on any such principles, that we can justify withholding from them the first of our general political rights, where its exercise is forbid by no considerations of public safety, or political necessity.

Mr. Eastwood said he was not in favour of letting in black *vagabonds* to vote, but felt more liberal than the select committee; he therefore moved to strike out $250 and insert $100.

The question was thereupon taken on Mr. Eastwood's motion and lost.

A division having been required upon the *proviso* reported, the question was taken thereon and carried in the affirmative as follows:

AYES—Messrs. Barlow, Beckwith, Bowman, Briggs, Brinkerhoff, Burroughs, Carpenter, Carver, Case, D. Clark, Collins, Dodge, Dubois, Dyckman, Edwards, Fairlie, Fenton, Ferris, Frost, Hallock, Howe, Humphrey, Hunt, Hunting, Hurd, Lansing, Lawrence, Lefferts, A Livingston, M'Call, Moore, Nelson, Park, Pike, Porter, President, Price, Pumpelly, Radcliff, Richards, Rosebrugh, Ross, Russel, Sage, R. Sanford, Schenck, Seaman, Seeley, Sharpe, Sheldon, I. Smith, R. Smith, Stagg, Starkweather, Steele, D. Southarland, Swift, Talmadge, Taylor, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, Ward, E. Webster, Wendover, Wheeler, Woods, Woodward Young---72.

NOES—Messrs. Bacon, Birdseye, Brooks, Buel, Child, R. Clarke, Clyde, Day, Duer, Eastwood, Fish, Hees, Huntington, Jay, Jones, Kent, King, Munro, Paulding, Pitcher, Platt, Rhinelander, Root, N. Sanford, Spencer, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Wheaton, E. Willians.—31.

The committee then rose and reported progress, and obtained leave to sit again.

In Convention, on motion of Mr. Buel, *ordered*, that the report of the committee of the whole as amended, be printed for the use of the members of the Convention. Adjourned.

MONDAY, OCTOBER 8, 1821.

The President resumed the chair at 9 o'clock, and the journals of Saturday were read and approved.

THE ELECTIVE FRANCHISE.

The Convention then again resolved itself into a committee of the whole, on the report of the committee of thirteen, on the subject of the elective franchise—Mr. N. Williams in the chair.

Sundry amendments were proposed, which were not acted on, when the question recurred on agreeing to the whole report.

Judge Van Ness said, if the question was now to be taken on the whole of the report, he wished to submit some observations in opposition to it, but if it was to be postponed, he would reserve them until the question should finally be taken.

Col. Young thought we ought to take the final question on the report, but it should be left open to amendment, in Convention.

On motion of the President, the committee rose and reported; and the report was ordered to lie on the table.

Gen. Root said, as the report was now open to amendment, he moved to strike out the third section, relating to a registry of votes.

Mr. R. remarked, that this section had passed in committee of the whole some days ago; but he hoped that they had since been convinced of their error, and satisfied themselves, that such a muster-roll of voters would be impracticable, and lead to mischievous consequences, by depriving many legal voters of

the right of suffrage, in consequence of not having their names properly inserted on the muster list. In the militia, if the roll is not complete, it may be completed by a non-commissioned officer on the day of training; the overseers of highways may add to their roll, names that are not contained in their commission list; but no additional names can be added to the list of voters, unless twenty days before the election. It will be necessary, in order to carry this provision into effect, to have certain officers to take the proof of the qualifications of voters to be enrolled previously to the election. This proof is to be taken in private, by affidavit, at least twenty days before the election. In order that all may hear of this, it will be necessary to put up a notice in at least three public places—a bar-room, a blacksmith's shop, and a post at the angle of the roads. Thus men are to be compelled to make two journeys, one to appear before this dread tribunal, and once at the polls of the election—perhaps in some instances, ten, twelve, or twenty miles, to get one vote! It is said, there will be no difficulty in all this. Perhaps some gentlemen will be so much interested, as to turn out and bring them to the polls of the election. But will they be willing to turn out twice—once to get their names entered on this great conscription list, and again to appear at the polls? No; they will not come. It will lead to this result—that a few individuals in the villages and cities, who have a desire that a few shall rule the many, who have a desire that aristocracy should triumph, will be on the alert: but honest republicans will never take such pains—modest, unassuming democracy will never be shackled by your conscription lists. We are told that this is to be our economical plan—that one day instead of three will be sufficient to receive all the votes of a town. I want to know whether the object of having our elections three days, was to accommodate the inspectors or the electors? I am of the opinion, that the object was to accommodate electors, who might otherwise have to come ten or twenty miles; and by having an election three days, it may be brought into their neighbourhood. The additional expense of having to appear before this board of control, will more than equal the expense of the inspectors for the two days' service at the time of election; and to fill up this list previously to the election, will require more than one day, the expense of which will be more than to balance the expense of a three days' election. I think, therefore, we have reason to hope this section will be rejected.

Col. Young opposed the motion. He reviewed and enforced the arguments that had been previously offered on the subject to the committee, and thought there could be no danger or impropriety in giving to the legislature the power of exercising a discretion to prescribe in the mode that the report had suggested. The inconvenience of registering was very inconsiderable. The tax lists, the highway assessments, and the muster rolls of the militia, would furnish the inspectors with indubitable documentary evidence of the admissibility of almost all the voters who were entitled to the privilege.

Mr. Van Vechten was for retaining this section. One great object in the adoption of such a provision was, to make oaths less frequent;—and now are we to return to the same old system which we have so lately expressed a desire to abandon? He hoped not. Admitting this system should be attended with some little inconvenience, the object for which it is adopted is sufficient to induce us to put up with it. But he did not believe it would be the case. It had been very properly remarked by the gentleman from Saratoga, that these names would not have to be enrolled every year. It would be necessary to add annually the names of such as became voters within the year; and, with proper attention to this system, much of the iniquity heretofore practised would be avoided. Great fears are expressed, that by some means men will not all be able to get their names enrolled, and thereby lose the privilege of voting, through the neglect of some military or town officers in making their returns. As this is to be regulated by the legislature, we need not trouble ourselves with it. As we have been frequently told, we can safely trust the legislature.

Mr. Van Vechten was sorry to hear the words aristocracy and democracy so frequently used in the Convention. They had convened, not to talk of political appellations, but to form a constitution, to which subject he was anxious that their attention should be more particularly directed. With respect to the sub-

ject before the committee, it was not to be presumed that the legislature would never err; but they were to presume that it would do its duty. Still, as there was a possibility of its being led astray, it was necessary to provide some constitutional guards. We are now endeavouring to secure the right of suffrage by a constitutional provision; but something must be left to the discretion of the legislature in carrying this provision into execution. It is said that many votes will be lost in this way, through ignorance of the manner of proceeding to obtain the necessary qualifications to appear at the polls. This cannot long be the case, as all will soon know the course and their duty. By this constitutional provision we are securing the right of suffrage, with a pledge to our government that none shall enjoy it who are not really entitled to it. It is pretended that these qualifications are to be tested in secret. It is to be regulated by the legislature; and when they have determined the manner in which it is to be conducted, it will be no longer a secret. Now what is to be the situation of our elections without this provision, with all the new qualifications that have been added? Will it not be extremely difficult at the polls, when all is in confusion and hurry, to ascertain who is qualified and who not? Could this not be determined with more propriety at some other time and place? My judgment tells me it could. I think it is the best feature in the report, and we have the experience of other states to confirm my belief; and, to relieve the gentleman from his fears, that the system cannot be understood, I will inform him, that we have many gentlemen among us who will be willing to teach those who cannot understand it themselves. A gentleman has remarked, that in this way we were about to establish an aristocracy. I hope we shall not do it by extending the right of suffrage. This sound of aristocracy must by this time, I think, have lost its force. No man can apprehend any danger from the adoption of this proposition. It is the provision originally reported by the committee; and that gentleman will not, I presume, accuse this committee of aristocratic notions. This cry of aristocracy has been too frequently addressed to this Convention.

Gen. Root was aware, that he had occasion to use terms sometimes, that were rather disagreeable to certain gentlemen. The term democracy appeared to frighten some gentlemen almost as much as the ghost of the old Council of Appointment. He did not know but the honourable gentleman from Albany, might have his ears wounded sometimes with that epithet. It had been stated. that it was agreed on all hands to get rid of the cause which led to so much perjury: by the provisions of this report, it is required that young men shall be twenty-one years of age before they are entitled to vote. How is this fact to be ascertained? By oath, if a challenge should be made. And how is a residence in the state to be ascertained? This is a fact perhaps known only to the elector: and again, as to residence in the town, which must be at least six months in all cases, and twelve months in some. This must be ascertained by the oath of somebody;—and would it not be better to have it ascertained by the person himself, who must be acquainted with the fact, than by some one who knows nothing about it? The legislature has provided a law, that challenges may be made at elections—members of the legislature have to swear to support the constitution of the United States. Oaths must then be provided—electors must go before this board, whether it be a triumvirate, or a decemvirate: and if so, where is the greatest safety, before the public, or to be pulled by the button or sleeve into a closet? In my judgment, it would be full as safe in public. It is said, the legislature will perhaps never carry it into effect; and I am sure it is the last one that they ever should—it is possibly so absurd that they will not see fit to carry it into execution. We are asked by the gentleman from Albany, whether we are afraid to trust the legislature? I am not afraid to trust to legislation at any time, if there is patriotism there; but I have known the time when there was neither honesty nor patriotism in our legislature.

We are told by the honourable gentleman from Saratoga, (Mr. Young,) that there will be no inconvenience in the application of this plan; if men once appear and get their names on this inscription list, it is sufficient for all their lives. I was sure the gentleman did not understand the plan which he advocated. I think it reads, "that he shall have paid a tax, or done military duty

within one year preceding the election." How, then, is his being once inscribed on this muster-roll to qualify him for life? It is not a fact.

We have been informed, that the necessary information can be obtained from the collector's warrant; that warrant is not necessarily returned till February; nor does the collector incur a penalty, if it is not returned till twenty days after the time assigned. How can this board of control obtain this list, till after the election has gone by? Suppose the legislature should fix the election at the last Tuesday in October, or first Tuesday in November; and the supervisors be by law required to make their tax list by the first Tuesday in October: a legal and equitable voter, in every other respect, is to be precluded from a vote because he, by accident or misfortune, was unable to get his name inscribed upon this list by the great board of control. The same of the road list: it cannot be obtained in season, unless the board of control should make a journey to the different overseers in the town; which would not be very convenient or economical in some towns, there being in the town where I live about fifty road districts; and the work is never all done till after our election will take place, and the lists are generally not more than half returned.

There would be similar evils in depending on military returns.

The law is to provide, that this list shall be made out twenty days previously to the election; and thus exclude all that come of age within these twenty days. You are to lop off twenty days of their political existence: you give with one hand, and take away with the other: you grant privileges by one section, and take them away by another. If all the towns in the state were like Ballston, one day's election might answer; but in the county where I reside, there are towns in which there is a string of inhabitants extending forty miles in length, upon the borders of a stream that breaks those vast mountains into chasms. Must these men all attend in one day, some more than thirty miles from the place of election? In the town where I reside, and it is the metropolis of the county too, some of the electors have to come over a mountain twelve or fourteen miles to the election; and shall the polls of election be held to accommodate the inspectors, and let the poor electors travel this distance?

With respect to the inscription list being filled twenty days before the election, some men may not hear of the time exactly, and others may forget the day.

In banking business I believe it is not unfrequent that a man forgets the day his note becomes due; but in that case there is three days grace—in the case of a poor elector not a day of grace! The gentleman from Albany (Mr. V. V.) thinks the electioneerers will notify the electors; they may on one side, but they will not on the other. Gentlemen, possessing principles, the very name of which wounds their feelings, might take pains to notify them, but mild, meek, and unassuming democracy would not do it: for but few of that side could, perhaps, afford the expense as well as those who have enjoyed high salary offices, acquired wealth by a lucrative profession, or by speculation. The gentleman from Albany informed us, the other day, that the time would soon arrive, when there would not be two political parties, that the germ of strife was about to be cut up. I trust, the old names of aristocrat and republican will prevail, till the latter shall be bound at the footstool of the former.

We return again to the conscription list. Suppose a man should have his name entered, and then move out of the town or county, he could come back on the day of election, and vote if he pleased; this list being taken for law and gospel.

Mr. R. said, he had been referred to the practice in England and in Massachusetts: if the committee had taken any of the *Boston notions* to ingraft into the constitution, he was sorry for it; for he did not like *Boston Particular* or *Boston notions*. When the great Corsican felt a disposition to be made consul for life, he had a registry of all the voters in France: they had to write their votes against their names, that it might be afterwards designated for whom they voted. He begged the honourable gentleman from Albany would refer to that great imperial precedent; as he did not appear to be very familiar with the Massachusetts precedent. If the Convention are willing to take this im-

perial precedent, I hope the name of aristocrat will not be so offensive, when democracy shall become more offensive.

Mr. Russell wished the motion to strike out might be restricted to the residue of the section after the fourth line, inclusive.

Gen. Root assented to the suggestion.

Mr. Van Vechten replied to Mr. Root.

Mr. Fairlie was in favour of retaining the section.

The question on striking out, was then taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Barlow, Birdseye, Bowman, Briggs, Brinkerhoff, Brooks, Carpenter, Carver, Case, R. Clarke, Clyde, Cramer, Day, Dubois, Duer, Eastwood, Fenton, Ferris, Fish, Frost, Hallock, Howe, Humphrey, Hunt, Hurd, A. Livingston, P. R. Livingston, M'Call, Moore, Park, Pitcher, Price, Pumpelly, Radcliff, Richards, Root, Rosebrugh, Russell, Sage, R. Sanford, Schenck, Seaman, Seeley, Sharpe, Sheldon, Starkweather, Steele, Swift, Tallmadge, Taylor, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, A. Webster, Wendover, Woodward—60.

NAYS—Messrs. Bacon, Baker, Beckwith, Breese, Buel, Burroughs, Child, D. Clark, Dyckman, Edwards, Fairlie, Hees, Hogeboom, Hunter, Huntington, Jay, Jones, Kent, King, Lansing, Lawrence, Lefferts, Munro, Nelson, Paulding, Platt, Porter, Reeve, Rhinelander, Rockwell, Rose, Ross, Sanders, N. Sandford, I. Smith, R. Smith, Spencer, Stagg, Van Ness, S. Van Rensselaer, Van Vechten, Ward, E. Webster, Wheaton, E. Williams, N. Williams, Yates, Young—48.

Mr. Van Buren thought we should take the question on separate parts of the report. There had been twelve days occupied, and nothing settled yet.

Mr. Birdseye moved to amend by striking out the words "subject to taxation or." Postponed.

Mr. Platt moved to expunge the proviso in the first section, which declares that no person, "*other than a white man*," shall vote, unless he have a freehold estate of the value of $250. He said, I am not disposed, sir, to turn knight-errant in favour of the men of colour. But the obligations of justice are eternal and indispensable: and this proviso involves a principle which, upon reflection, I cannot concede, or compromise as a matter of expediency. I am aware of the intrinsic difficulty of this subject. The evils of negro slavery are deep rooted, and admit of no sudden and effectual remedy. In the act of doing justice, we are bound to consider consequences. With such a population as that of Virginia, or the Carolinas, a sudden emancipation, and permission to the negroes to vote, would be incompatible with the public safety: and necessity creates a law for itself. But, sir, in this state there is no grounds for such a plea. I admit, that most of the free negroes in our state, are unfit to be entrusted with the right of suffrage; they have neither sufficient intelligence, nor a sufficient degree of independence, to exercise that right in a safe and proper manner. I would exclude the great mass of them, but not by this unjust and odious discrimination of colour. We are under no necessity of adopting such a principle, in laying the foundation of our government. Let us attain this object of exclusion, by fixing such a uniform standard of qualification, as would not only exclude the great body of free men of colour, but also a large portion of ignorant and depraved white men, who are as unfit to exercise the power of voting as the men of colour. By adopting the principle of universal suffrage, in regard to white men, we create the necessity, which is now pleaded as an excuse for this unjust discrimination. Our republican text is, that all men are born equal, in civil and political rights; and if this proviso be ingrafted into our constitution, the practical commentary will be, that a portion of our free citizens shall not enjoy equal rights with their fellow citizens. All freemen, of African parentage, are to be constitutionally degraded: no matter how virtuous or intelligent. Test the principle, sir, by another example. Suppose the proposition were, to make a discrimination, so as to exclude the descendants of German, or Low Dutch, or Irish ancestors; would not every man be shocked at the horrid injustice of the principle? It is in vain to disguise the fact;

we shall violate a sacred principle, without any necessity, if we retain this discrimination. We say to this unfortunate race of men, purchase a freehold estate of $250 value, and you shall then be equal to the white man, who parades one day in the militia, or performs a day's work on the highway. Sir, it is adding mockery to injustice. We know that, with rare exceptions, they have not the means of purchasing a freehold: and it would be unworthy of this grave Convention to do, *indirectly*, an act of injustice, which we are unwilling openly to avow. The real object is, to exclude the oppressed and degraded sons of Africa; and, in my humble judgment, it would better comport with the dignity of this Convention to speak out, and to pronounce the sentence of perpetual degradation, on negroes and their posterity for ever, than to establish a test, which we know they cannot comply with, and which we do not require of others.

The gentleman from Saratoga, who, as chairman of the committee, reported this proviso, (Mr. Young,) has exultingly told us, that ours is the only happy country where freemen acknowledge no distinction of ranks—where real native genius and merit can emerge from the humblest conditions of life, and rise to honours and distinction. It sounded charmingly in our republican ears, and I have but one objection to it, which is that, unfortunately for our patriotic pride, it is not true. I abhor the vices and oppressions which flow from privileged orders as much as any man, but it is a remarkable truth, that in England, the present *Lord Chancellor Elden*, and his illustrious brother, *Sir William Scott*, are the sons of a *coal-heaver;* and the present *Chief Justice Abbot*, of the Kings Bench, is the son of a *hair-dresser*. The gentleman from Saratoga, (Mr. Young,) began his philipic in favour of universal suffrage, by an eulogium on liberty and equality, in our happy state. And what then? Why, the same gentleman concluded by moving a resolution, in substance, that 37,000 of our free black citizens, and their posterity, for ever, shall be degraded by our constitution, below the common rank of freemen—that they never shall emerge from their humble condition—that they shall never assert the dignity of human nature, but shall ever remain a degraded cast in our republic.

The same gentleman recited to us on that occasion, an elegant extract from an admired poet, (Gray's Elegy,) describing in melting strains, the effects of humble poverty, and mental depression. Let me ask, sir, who is it, that now seeks to "repress the noble rage;" and to "freeze the genial current of the soul"? I must be permitted, to express my deep regret, that the gentleman's *poetry*, and his *prose*, do not agree in sentiment. I confess, sir, I feel some apprehension, when I anticipate, that the speeches of that honourable member, will be read by the proud English critic; who will boast, that "slaves cannot breathe English air;" that "they touch his country, and their shackles fall." The gentleman from Saratoga will be justly considered, as a leading patriot and statesman in our republic; and if his text and his commentary, his precept and his practice, are at variance; we shall be nakedly exposed to the lash of criticism, from the hand of retaliation.

Before we adopt this proviso, I hope gentlemen will take a retrospect of the last fifty years. Consider the astonishing progress of the human mind, in regard to religious toleration; the various plans of enlightened benevolence; and especially the mighty efforts of the wise and the good throughout Christendom, in favour of the benighted and oppressed children of Africa.

In our own state, public sentiment has been totally changed on the subject of negro slavery. About sixty years ago, an act of our colonial assembly was passed, with this disgraceful preamble: "whereas justice and good policy require, that the African slave-trade should be liberally encouraged." And within the last forty years, I remember, in the sale of negroes, it was no uncommon occurrence to witness the separation of husband and wife, and parents and children, without their consent, and under circumstances which forbid all hope of their ever seeing each other again in this world. And this was done without apparent remorse or compunction, and with as little reluctance on the part of buyer and seller, as we now feel in separating a span of horses, or a yoke of oxen. But I thank God, that a sense of justice and mercy has in a good measure regenerated the hearts of men. A rapid emancipation has taken place; and we approach the era, when, according to the existing law, slavery will be abolished in this state.

But, sir, we owe to that innocent and unfortunate race of men, much more than mere emancipation. We owe to them our patient and persevering exertions, to elevate their condition and character, by means of moral and religious instruction. And I rejoice that by the instrumentality of Sunday schools, and other benevolent institutions, many of them promise fair to become intelligent, virtuous, and useful citizens. Judging from our experience of the last fifty years; what may we not reasonably expect, in the next half century? Sir, if we adopt the principle of this proviso, I hope and believe, that our posterity will blush, when they see the names recorded in favour of such a discrimination.

I beseech gentlemen to consider the enlighted age in which we live! Consider how much has already been accomplished by the efforts of Christian philanthropy! During the last forty years, we have brought up this African race from the house of bondage: We have led them nearly through the wilderness, and shewn them the promised land. Shall we now drive them back again into Egypt? I hope not, sir. The light of science, and the heavenly beams of Christianity, are dawning upon them. Shall we extinguish these rays of hope? This is not a mere question of expediency. Man has no right to deal thus with his fellow man; except on the ground of necessity and public safety. It is not pretended that such a reason exists in this case. We shall violate a sacred principle, to avoid, at most a slight inconvenience:—and, if I do not deceive myself, those who shall live fifty years hence, will view this proviso in the same light as we now view the law of our New-England fathers, which punished with death all who were guilty of being Quakers, or the law of our fathers in the colonial assembly of New-York, which offered bounties to encourage the slave trade.

As a republican statesman, I protest against the principle of inequality contained in this proviso. As a man and a father, who expects justice for himself and his children, in this world; and as a Christian, who hopes for mercy in the world to come; I can not, I dare not, consent to this unjust proscription.

Chief Justice Spencer was opposed to the proviso, although on a former occasion he had voted to exclude the blacks altogether. His reasons were, that the rule contained in the proviso was incorrect, because it gave to the owner of real estate an advantage over a person who might, perhaps, possess a leasehold estate of the value of $1,000, or personal property to the amount of $20,000.

Mr. Van Buren said he had voted against a total and unqualified exclusion, for he would not draw a revenue from them, and yet deny to them the right of suffrage. But this proviso met his approbation. They were exempted from taxation until they had qualified themselves to vote. The right was not denied, to exclude any portion of the community who will not exercise the right of suffrage in its purity. This held out inducements to industry, and would receive his support.

Col. Young, would forbear remarks upon the uncourteous expression of the gentleman from Oneida (Mr. Platt) in pronouncing his (Mr. Y's) observations untrue. But he should repeat that they were true, and that the United States of America was the only country under heaven, where the humble poor could emerge from obscurity. If that honourable gentleman had adverted to those books of logic which have doubtless formed no small part of his study, he would have found that *Exceptio probat regulam*, and the *three* cases only which he has cited from Great Britain, evince the truth of the general observation.

Mr. Y. considered the *proviso* as the result of compromise. It had been so considered and *advocated* on Saturday by an honourable gentleman from Albany (Mr. Kent) who a few minutes after *voted* against it. Another honourable gentleman from Albany has now given notice, that although a few days ago he voted for the *total* exclusion of the blacks, he is now opposed to their *qualified* exclusion. Gentlemen had an undoubted right to change their minds, but he would desire it to be specifically understood, that if this proviso was rejected, he should move to insert the word *white* in the report and exclude them altogether.

Chancellor Kent explained. He said that slavery existed in this state at the time of the revolution, and yet it was not recognized in the constitution. There was no such thing known in the constitution of the non-holding states, with the exception of Connecticut, as a denial to the blacks of those electoral privileges that were enjoyed by the whites. In Europe the distinction of colour was unknown. The judges of England said even so long ago as the reign of Queen Elizabeth, that the air of England was too pure for a slave to breathe in. The same law prevails in Scotland, Holland, France, and most of the other kingdoms of Europe.

The question on striking out the proviso, was then taken by ayes and noes and decided as follows :

AYES—Messrs. Bacon, Barlow, Birdseye, Brooks, Buel, Child, R. Clarke, Day, Duer, Eastwood, Fish, Hees, Hogeboom, Huntington, Jay, Jones, Kent, Munro, Paulding, Pitcher, Platt, Rhinelander, Root, Sanders, N. Sanford, Spencer, Sylvester, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Wheaton, E. Williams, Wooster—33.

NOES—Messrs. Baker, Beckwith, Bowman, Breese, Briggs, Burroughs, Carpenter, Carver, Case, D. Clark, Cramer, Dubois, Dyckman, Edwards, Fairlie, Fenton, Ferris, Frost, Howe, Humphrey, Hunt, Hunter, Hunting, Hurd, Lansing, Lawrence, A. Livingston, P. R. Livingston, M'Call, Moore, Nelson, Park, Porter, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Rose, Ross, Russell, Sage, R. Sandford, Schenck, Seaman, Seeley, Shape, Sheldon, I. Smith, R. Smith, Stagg, Starkweather, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, Ward, A. Webster, Wendover, N. Williams, Woods, Yates, Young—71.

Mr. Birdseye moved to strike out the words " subject to taxation, or"—in the 26th line, and after a discussion of the subject at some length by the mover, and Messrs. Russell, Fairlie, and Van Buren, the question was taken thereon, and *lost*.

Mr. Tallmadge moved to strike out the word freehold in the 30th line, and to insert in lieu thereof the words " real or personal," before the word estate. *Lost.*

After a few remarks from Messrs. Birdseye, Young and Fairlie against the amendment, the motion was put and lost.

A division was then called for on the report, as far as to the proviso.

Mr. E. Williams wished this might be done in committee of the whole; and on his motion the Convention again resolved itself into a committee of the whole on the right of suffrage—Mr. N. Williams in the chair.

The first section of the report being under consideration, the question was taken on the first part thereof to the proviso, by ayes and noes, and decided in the affirmative, as follows :

AYES—Messrs. Baker, Barlow, Beckwith, Birdseye, Bowman, Breese, Briggs, Brooks, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dubois, Dyckman, Eastwood, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunting, Hurd, Lansing, Lefferts, A. Livingston, P. R. Livingston, M'Call, Moore, Nelson, Park, Pitcher, Porter, President, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seeley, Sharpe, Sheldon, I. Smith, R. Smith, Starkweather, Steele, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Ward, A. Webster, E. Webster, Wendover, Yates, Young—83.

NOES—Messrs. Bacon, Duer, Edwards, Fairlie, Fish, Hees, Hunter, Huntington, Jay, Jones, Kent, King, Lawrence, Munro, Paulding, Platt, Rhinelander, Rose, Sanders, Seaman, Spencer, Stagg, Sylvester, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Wheaton, E. Williams, Woods, Woodward, Wooster—32.

Mr. Birdseye moved to strike out the word " taxation," in the twenty-sixth line, and to insert in lieu thereof the words " direct taxation on any assessment on his real or personal estate."

Mr. E. Williams was opposed to the motion ; and

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Mr. King made a few explanatory remarks, when the motion was put, and lost.

Col. Young moved to insert the word "direct," in the twenty-sixth line, immediately preceding the word "taxation." Carried.

Mr. R. Smith moved to amend, by inserting after the word "thereon," in the thirty-second line, the following words: "or shall own and possess other taxable property of the value of five hundred dollars." Lost.

The question was then taken on the proviso, and carried by a large majority, without a division.

On the whole section, including the proviso, the question was taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Baker, Barlow, Beckwith, Bowman, Briggs, Brooks, Burroughs, Carpenter, Carver, Case, Child, D. Clark, Clyde, Collins, Cramer, Day, Dubois, Dyckman, Fenton, Ferris, Frost, Hallock, Howe, Humphrey, Hunt, Hunting, Hurd, Lansing, Lefferts, A. Livingston, P. R. Livingston, M'Call, Moore, Nelson, Park, Pitcher, Porter, President, Price, Pumpelly, Radcliff, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seeley, Sharpe, Sheldon, I. Smith, R. Smith, Starkweather, Steele, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Ward, A. Webster, E. Webster, Wendover, Yates, Young—74.

NOES—Messrs. Bacon, Birdseye, Buel, R. Clarke, Duer, Eastwood, Edwards, Fairlie, Fish, Hees, Hogeboom, Huntington, Jay, Jones, Kent, King, Lawrence, Munro, Paulding, Platt, Reeve, Rhinelander, Rose, Sanders, Seaman, Spencer, Stagg, Sylvester, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Wheaton, E. Williams, Woods, Woodward, Wooster—38.

The question was then taken on the whole report, and carried without a division, whereupon the committee rose and reported.

In Convention, Ordered that the report as amended be printed, and ordered to lie on the table.

THE APPOINTING POWER.

The Convention then resolved itself into a committee of the whole, on the report of the committee on the appointing power. Mr. Lawrence in the chair.

Mr. Jay, pursuant to leave given, moved a reconsideration of the vote on the question relative to the election of justices of the peace by the people, in their respective towns. Although he did not pledge himself to vote for that measure if his motion prevailed, yet he was disposed to give the subject further consideration, and as it was at best but a choice of difficulties, was inclined, as at present advised, to risk the consequences of election by the people.

Gen. Root. It has been claimed that to elect justices of the peace is a democratic measure. Sir, I oppose such election, not merely on the ground that it would produce turmoil and confusion, but principally on the ground that it would be the height of aristocracy. I beg pardon of the honourable gentleman from Albany, (Mr. Van Vechten,) for the use of terms so unpleasant to his ear, but the argument requires their adoption. And I say that the plan of electing magistrates in town meetings, is as destitute of democracy as the Canton of Berne in Switzerland, where three or four hundred burghers kindly save the mass of the people from that trouble. The jurisdiction of a justice of the peace is co-extensive with the county in which he resides. And you elect by one town a magistrate who can play the tyrant over all the other towns in the county, without any responsibility to those towns. There is no relation between the elector and the elected, and the few are thus enabled to govern the many, which I take to be the very essence of aristocracy.

It is said, however, that the other towns, having equal powers, may retaliate. And is this a desirable state of things? Towns differ in sentiment. They have conflicting interests, or are attached to different parties, and a judicial warfare commences, in which judicial shot are exchanged from town to town, to the great annoyance of both. But on the same principle that towns may choose county officers, counties ought to choose state officers—and are gentle-

men prepared for that? It may be reserved to Rockland to choose a governor, whilst a chief justice may perhaps fall to the lot of Delaware, and a judge of the supreme court to the county of Putnam. Such an election as this would probably find but few advocates; and yet there is as much democracy in this, as there is in the plan proposed for choosing justices by the towns. Gentlemen seemed to think that they had got us into a dilemma; but I discard such democracy, where one-seventeenth part are enabled to lord it over the residue. The county of Delaware has twenty-three towns; the counties of Ontario and Westchester about the same number. In the latter county there are towns where very few persons attend their town meetings, and it may be in the power of six or eight in one town to elect four magistrates who may exercise jurisdiction over twenty-two other towns to whom they do not bear even the shadow of responsibility. Gentlemen may arraign me, if they think proper, at the bar of public opinion, but if this be democracy, I have utterly mistaken its character.

Mr. Burroughs spoke in opposition to the motion. He was followed by

Mr. Eastwood. Although, Mr. President, I was in the minority on this question, when it was taken the other day, I am opposed to a reconsideration of it now, or at any time hereafter, for I do think, if we are going to consider, and reconsider, and consider again, and at such great length as our considerations are, we shall be detained here till winter, and I am, therefore, altogether opposed to a reconsideration of the question at all; and I shall, at all times, be satified to comply with the vote of a majority of this Convention, as I heretofore have been. We have been here a long time, and I think the people who see us, will be tired of the sight, and those who do not see us, will be tired of hearing from us. Indeed, sir, I should regret, that if on my way home I should be known to have been a delegate to the Convention. But, sir, I rejoice, that when I get home, I shall be where I shall not be seen nor heard of very soon. Perhaps our delay here, may in some measure be owing to the proceedings of the first committee that was appointed after the organization of this Convention—I think that they are entitled to but little credit for their exertions, in recommending the whole of our constitution to be submitted to ten committees, consisting of seventy persons. Did they expect that those committees would report, that the different subjects referred to them wanted no alteration, or might they not have known, that they would be for trying experiments, by tearing down all the old constitution, and recommending something better, as they say; but as I say, in many cases something worse. I do not think that committee made a very acceptable or able report, although they had a man at their head as wise as a King. If I am not mistaken, sir, we are doing more than the people ask, and some things that they do not wish.

Mr. Briggs supported the motion.

Mr. Van Buren hoped the question would not be reconsidered. It had been once distinctly decided and it ought not to be reviewed—at least, not until all hope of substituting a better plan was despaired of. The committee was now called to the consideration of the single question, whether justices of the peace should be elected by the towns in which they reside. Should the present question be decided in the negative, he had a proposition which varied essentially from that he had heretofore submitted, and which he then read in his place. He did not offer it at present, as it would not be in order, but he purposed, at a subsequent and proper time, to present it to the consideration of the committee.

Mr. Edwards remarked, that the opposition to the plan for electing justices, now rested upon very different ground from what it did when the subject was last under discussion. Then it was urged that the people would not discreetly exercise the power—now that it is *aristocratical.* This is a most extraordinary idea. And how is it attempted to be supported? Why, it is said that men may be called upon to answer before magistrates whom they have had no voice in electing, and that towns will elect magistrates who will oppress the inhabitants of other towns. The idea that towns will elect magistrates for the purpose of oppressing each other, proceeds upon the idea that the people are not only unsound, but absolutely rotten. Sir, I aver, that there is no town which is so absolutely a Sodom, as this assertion implies. Mr. Edwards then

proceeded to show, that under the existing organization of the magistracy, the people were called upon to answer before local juries, selected by local magistrates, and that no cause of complaint had ever existed. He then proceeded to show how faithfully and how discreetly the people exercised all their town privileges, and proceeded to express his surprize that their discretion should be called in question in the face of these facts. The wise men, he said, who were now here assembled, were selected by the inhabitants of these very towns in their collective capacities. The people have indirectly chosen a succession of men to be Presidents of the United States who were not only ornaments of their country, but ornaments of human nature; and yet their ability to select inferior magistrates was questioned, and by men who but yesterday were loud in their elogiums upon them, and were for investing them with the right of universal suffrage. Some gentlemen seemed to proceed upon the idea that although in their collective capacity the people were competent to the exercise of any trust, yet, when they were broken into fragments, and acted in small communities, no confidence was to be reposed in them. To my mind, sir, there is something very inconsistent in all this, and I am very apprehensive that considerations are operating which are unworthy of notice. My honourable colleague, (Mr. Sharpe) observed a few days since, that before he left his home he had heard it intimated that we should be influenced by party considerations, and that he had denied it. I also, sir, heard similar intimations which I always repelled with indignation; and I hope sincerely that I may not be disappointed;—that no gentlemen will for a moment suffer himself to be diverted from the faithful and honest discharge of the duty he owes to the whole community, and to those who will succeed us, by any such considerations. As it respects myself, I realize most sensibly my incompetency to the task which is imposed upon me. After doing my utmost to elevate myself above every party and every selfish consideration, I still find myself much embarrassed in determining upon the best course to be pursued. The measures which I here sanction by my vote, will ever be subjects of solicitude to me; and I shall ever contemplate them with pleasure or pain, as they prove to be beneficial or otherwise.

Mr. Edwards then proceeded to show that the plan proposed by Mr. Van Buren, would still leave in the executive the power of organizing a body of men, in every town in the state, who could be materially influenced by him, and that through them he could produce a vibration in every neighbourhood. He expressed a hope that the cord which connected them with the executive would be cut. He then proceeded, to show why it was that the magistracy of the state was so degraded, and averred that it was mainly to be ascribed to the fact, that those officers were more frequently bestowed as a remuneration for devotion to the views of particular individuals, than from a regard to the merit of those who received them. That they were no longer considered as testimonials of merit. He contrasted the character of the magistracy of this state with that of many of the sister states, and of the mother country; and then proceeded to shew in what manner they could be made honourable, and worthy of the acceptance of the most respectable men. The mode proposed of electing them in towns, he was satisfied was the best. Four years ago he advocated this proposition in the legislature. It was then considered a wild project. Public attention, however, has since been drawn to it; and he was satisfied that two-thirds of the people of this state were in favour of it. At that time he was in a small minority in the legislature, consisting of but twenty-four. He had now the honour of finding himself in a body where his political opponents did not exceed sixteen. He could not, therefore, be accused of urging this project with a view to answer any sinister ends; for upon this point he had pursued the even tenor of his way through the storms of adversity, and in the sunshine of prosperity.

Mr. King. If the committee should reconsider the question, it would bind no one in voting on the question which may be reconsidered—it may be approved, or again negatived, as the committee shall decide. Another proposal has been read, which is intended to be offered to the committee hereafter. It is reasonable to reconsider; as in this case, as well the proposal which is announced, as the plan of electing magistrates by town meetings will be before

the committee ; whereas, by refuing to reconsider, the plan of electing justices of the peace in town meetings will stand condemned, and there will be nothing before the committee but a scheme which in effect will send the appointment to the seat of government, to be made by the governor.

The chief object is to separate from the seat of government the appointment of justices of the peace ; whether such appointment be made in town meetings, or in any other satisfactory mode within the several counties, is not so material as that it shall be withdrawn from the governor and sent into the counties.

It is not improper to advert to the plan which is to be laid before the committee ; a double nomination in the several counties is to be made by the supervisors and by the county court—if the nominations agree, the persons so jointly nominated are to be appointed justices ; and where the nominations disagree, the double nominations are to be sent to the governor to choose. The consequence will probably be, that the nominations will generally disagree, and be referred to the governor. In substance, with slight variation, this is the same project as was some days past negatived, and negatived because it brought all these appointments to Albany, where the same intrigue and bad influence would again prevail as were encouraged under the council of appointment.

Cut off the communication with the seat of government, and there will be little difficulty in making useful and worthy appointments.

It seems to be feared that unless these appointments be made by others than the people—that disorder and tumult will be excited among the people—but why more than in the election of supervisors and other town officers ? Whether the influence or strength of parties will be affected favourably or otherwise by either of the proposals, I am entirely ignorant. But one thing I do know, that in establishing for futurity the provisions of the constitution, they should repose on principles which are stable, and not on the interest of parties, which are ephemeral and subject to endless changes. I shall make no mistake in confiding the choice of magistrates to the people in town meetings.

It is alleged by the gentleman from Delaware, that the appointment of justices in town meetings would be aristocratical. Names do not alter things ;—if it be aristocracy for one town to elect a justice of the peace, who is to try cases between any of the inhabitants of the county, it is also aristocracy for any and every other town in like manner to elect justices in their respective towns—and as all the towns are to elect their own justices, all the towns are equal, and will exercise equal rights. Thus equality and aristocracy mean, in the language of the debate, the same thing.

Call a country town meeting an aristocracy ! What, then, may it not be called ! But give to this simple, primitive, and innocent association what bad name we like, still a town meeting of freemen presents a picture of order, of freedom, and intelligence, which is the envy of other lands, and which is the basis and security of our republican system.

The question is, whether a town meeting be competent to elect a justice of the peace.

What qualification is necessary to make this appointment ? The ability to distinguish among the candidates, so as to select him who possesses wisdom, integrity, and learning, sufficient to discharge the duties of the office.

And who are so capable of knowing these qualifications in the inhabitants of any town, as the inhabitants themselves ?

There exists not any body of men who are so able to judge of the merits of the candidates as their own townsmen : born, educated, and brought up together, they thoroughly understand, and have measured and compared, every faculty of their minds and bodies.

From childhood to manhood they have had constant intercourse with each other, and are therefore above all other men the most capable to select such as are best qualified for any service to which they may be called. They are also likely to be impartial towards each other, and to select, without envy, the most worthy. There is a beauty and simplicity in this mode of choosing the magistrates, who, we may presume, will promote peace and order, and arbitrate justly between their neighbours.

No political consideration properly belongs to this subject ; no flattery to

the people is intended by the proposal ; but with the provisions which are, and will be provided for the education of our fellow-citizens, we ought to have no fear in securing to them in their town-meetings, the right of choosing the justices of the peace throughout the state.

I am for confirming to the people the choice of their own magistrates ; and confidently believe that we shall thereby obtain a more honest, enlightened and prudent magistracy than has before existed among us.

Mr. Van Buren proposed to reply hereafter to the observations of the gentleman from New-York (Mr. Edwards.) At present he would only observe, that when party feeling first disclosed itself on this subject, it was not on that side of the house, which now opposed a reconsideration of the question. He was willing it should be examined and let the blame rest where it ought.

The honourable gentleman from Queens (Mr. King) had deemed a reconsideration a matter of courtesy—not involving the final determination of the question. He could not however but consider it in a different point of view, and thought it was in vain to disguise it, that a decision on the motion of the honourable gentleman from Westchester would be substantially final and conclusive.

Mr. Tompkins was also opposed to a reconsideration, and wished that the question might now be disposed of ; but, *on motion*, the committee rose, reported progress, and obtained leave to sit again, and the Convention adjourned.

TUESDAY, OCTOBER 9, 1821.

The President assumed the chair at the usual hour when the minutes of yesterday were read and approved.

THE APPOINTING POWER.

On motion, the Convention resolved itself into a committee of the whole, on the unfinished business of yesterday (the appointing power.)—Mr. Lawrence in the chair.

Mr. Jay said, that finding his motion to reconsider the question relative to the election of justices, had produced considerable excitement, and was about to call forth a protracted debate ; he would wish, for the present, to withdraw it: reserving to himself the privilege of renewing his motion hereafter, if he should think proper to do so.

Second section under consideration ; which provides for the appointment of secretary of state, attorney-general, and all judicial officers, except justices of the peace, by the governor and senate.

Judge Platt moved an amendment which he had proposed some days before, and which had been ordered to be printed. This amendment contained two sections : the former providing for the appointment of some of the higher officers by the governor and senate, and the latter for the election of a body of nine in each county, to serve as a council of appointment for county officers.

Mr. President was opposed to taking up the first section of this amendment now.

Judge Van Ness moved to postpone its consideration until to-morrow, which was agreed to.

The question being taken on the amendment offered by Judge Platt, by ayes and noes, the same was decided in the negative by all the members present, excepting Messrs. Bacon, Jones, Platt, Van Ness, J. R. Van Rensselaer, and Woods, who voted in the affirmative.

Mr. Van Buren then offered the following amendment :

" Who (*i. e.* justices of the peace) shall be elected in the manner following, viz : That the board of supervisors in every county in this state, shall once in every years at such time as the legislature may direct, recommend to the governor a list of persons equal in number to the justices of the peace, and of all other county officers who are not directed to be elected immediately by the peo-

ple, whose appointment is not otherwise provided for in this constitution; and the respective courts of common pleas of the said counties shall also recommend a list of the like number. And as often as any vacancies shall happen in the said offices, or either of them, the board of supervisors and court of common pleas in the counties in which such vocancies may happen, shall recommend lists of persons equal to the number of vacancies in such counties. And that it shall be the duty of the said board of supervisors, and court of common pleas, to compare such lists at such time and place as the legislature may direct; and if on such comparison, the said board of supervisors and court of common pleas shall be found to agree in all or in part, they shall file a certificate of such recommendation and agreement in the office of the clerk of the county; and the person or persons in whom they shall agree shall by such agreement be appointed to the office for which he was so recommended, and in case of disagreement in whole or in part, it shall be the further duty of the said boards of supervisors, and courts of common pleas respectively, to transmit the said lists so far as they disagree in the same to the governor, whose duty it shall be to select from the said lists and appoint the said justices of the peace and other officers, and to commission the same accordingly.

That the said justices of the peace shall hold their said offices for years, and the other officers for the respective terms following, viz:

And such of them as are appointed by the board of supervisors and courts of common pleas, shall be removable by the united votes of the said board and courts separately given; and those selected and commissioned by the governor may be removed by him on the application of those recommending them, stating the grounds why such removal is prayed for."

Mr. Duer proposed to amend the amendment of the gentleman from Otsego, (Mr. Van Buren,) by striking out all that part after the word, "following," and by inserting the following substitute;

"That is to say, the judges of the courts of common pleas, and the supervisors of each of the counties of this state, or a majority of the said judges and supervisors respectively, shall once in every years, severally assemble in their respective counties, at such time as the legislature shall direct, and each of the said judges and supervisors so assembled as aforesaid, shall openly nominate as many persons for justices of the peace in the several towns of their respective counties, as may be equal in number to the seversl justices of the peace to be appointed therein. The said judges and supervisors shall then meet together for the purpose of comparing their respective nominations, and the persons whose names shall be found on both lists shall be justices of the peace for the said counties respectively; and out of the persons whose names shall not be found on both lists, one half shall be chosen by the joint ballot of the said judges and supervisors, to supply the deficiency in the number of justices of the peace to be appointed."

The question being taken thereon, the same was lost.

Mr. Van Vechten then moved to amend the amendment of the honourable gentleman from Otsego, (Mr. Van Buren,) by inserting, after the word, "*recommend*," the words following:—

"Appoint so many justices of the peace for each of the towns in such county, as the said towns may respectively be entitled to by law; and all other county officers who are not to be elected by the people, or whose appointment is not otherwise directed by this Convention; and shall certify a list of such appointments to the first judge of the county, whose duty it shall be forthwith to issue a commission under his hand and the seal of the court of common pleas of the county, to the said justices, and other officers to be appointed as aforesaid:—And as often as any vacancies shall happen, the board of supervisors of the county in which such vacancies may happen, shall fill the same; and that the justices appointed for that purpose, shall be commissioned by the first judge in the manner aforesaid." Lost.

The question was then taken on Mr. Van Buren's amendment, by ayes and noes, and decided in the negative, as follows:

NOES.—Messrs. Bacon, Baker, Barlow, Briggs, Brooks, D. Clark, Collins, Dubois, Duer, Dyckman, Edwards, Fish, Hallock, Hees, Hogeboom, Hunter, Huntington, Hurd, Jay, Jones, Kent, King, Lefferts, M'Call, Moore, Paulding, Platt, Porter, Radcliff, Rhinelander, Rose, Sage, Sanders, N. Sanford, R. Sandford, Seeley, Sharpe, I. Smith, R. Smith, Spencer, Stagg, D. Southerland, Sylvester, Tallmadge, Ten Eyck, Townley, Van Fleet, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Ward, E. Webster, Wendover, Wheaton, E. Williams, Woods, Woodward, Wooster—59.

AYES.—Messrs. Beckwith, Birdseye, Bowman, Breese, Brinkerhoff, Buel, Burroughs, Carpenter, Carver, Case, Child, R. Clarke, Clyde, Cramer, Day, Eastwood, Fairlie, Fenton, Ferris, Frost, Howe, Humphrey, Hunt, Hunting, Lansing, A. Livingston, P. R. Livingston, Munro, Nelson, Pitcher, President, Price, Pumpelly, Reeve, Richards, Rockwell, Root, Ross, Russell, Schenck, Seaman, Sheldon, Starkweather, Steele, Swift, Taylor, Townsend, Tripp, Tuttle, Van Buren, Van Horne, A. Webster, N. Williams, Yates, Young.—56.

Col. Young moved to reconsider the motion of the honourable member from Orange, (Mr. Duer.) *Carried.*

A division was called upon the passage of the same, which was carried in the affirmative, as follows:

AYES.—Messrs. Baker, Beckwith, Birdseye, Bowman, Breese, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Carver, Child, D. Clark, R. Clarke, Clyde, Cramer, Day, Dubois, Duer, Dyckman, Eastwood, Fairlie, Fenton, Ferris, Frost, Howe, Humphrey, Hunt, Hunter, Hunting, Jones, Kent, King, Lansing, A. Livingston, M'Call, Moore, Munro, Nelson, Park, Paulding, Pitcher, Porter, Price, Pumpelly, Radcliff, Reeve, Richards, Root, Rose, Ross, Russell, Sage, Sanders, N. Sanford, R. Sandford, Schenck, Seaman, Seeley, Sharpe, Sheldon, I. Smith, R. Smith, Spencer, Stagg, Starkweather, Steele, D. Southerland, Swift, Sylvester, Tallmadge, Taylor, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Ward, A. Webster, Wendover, Wheaton, Woods, Woodward, Yates, Young.—91.

NOES.—Messrs. Bacon, Barlow, Briggs, Collins, Edwards, Fish, Hallock, Hees, Hogeboom, Huntington, Hurd, Jay, Lefferts, P. R. Livingston, Platt, President, Rhinelander, Rockwell, Ten Eyck, Van Ness, E. Williams, N. Williams, Wooster.—23.

Whereupon, the question was taken upon the whole section as amended, and carried without a division.

The third section was next considered. This section provided for the appointment of the clerks of courts, and clerks of counties, by the courts of which they were clerks; and for the appointment of district attorneys by the courts of common pleas.

Gen. Root then moved to introduce the following, to come in before the third section, as it naturally preceded it in order.

"That sheriffs and county clerks shall be chosen by the electors of their respective counties, once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices respectively. They may be by law required to renew their security from time to time, and in default of giving such new security, their offices shall be deemed vacant."

Gen. Root remarked, that a great contrariety of sentiment had prevailed with regard to the expediency of electing sheriffs by the people. He should be opposed to it himself were the elections to be annual, and the sheriff to attend the polls with executions in his pocket, and deputies at his heels. But give him three years for the duration of his office, and make him ineligible for the next three years; so that he may not suspend the collection of debts with a view to his re-election. In this way the correct and faithful discharge of his duties would be secured, and an important office restored to the people. His proposition was calculated to give to the people some of the wheat—not the chaff only.

Mr. N. Williams said, he had not troubled the committee with any remarks on the appointing power, except in expressing his dissent to the principle of electing justices, and he was glad to find that plan discarded by the Convention. But we are now presented with one which, although not quite so odious, is to the full as objectionable in many prominent points. He would not be suspected, he thought, of withholding from the people the privilege of electing any officer, properly eligible by the people, upon those plain and clear republican principles which were compatible with good government; but it must be admitted, that in every well organized government certain officers should not be subject to popular elections, but be thrown upon some appointing power at a distance from the people. He would adopt this distinction on account of the peace and safety of the community. The chief magistrate of the state, and the legislative bodies, who were principally engaged in making laws, and in superintending their execution, with a jurisdiction co-extensive with the whole body politic, should undoubtedly be elected by the people; but those officers who were to execute important duties in immediate contact with the people, and frequently in hostility with their feelings and interests, ought never to derive their power directly from their hands. Such are the judges of every grade, and the high executive officers in the counties. Officers, whose duties and functions touch so nearly the business and bosoms of men, ought not to be dependant on these very men for their commissions. It did not alter the case much, he said, that by this plan sheriffs were to be appointed by the supervisors and judges; for it was evident, that if these bodies were to make the appointment, the election of supervisors would throw the whole people into commotion. And when elected, an excellent board, with these new duties, would be divided into factions. [Here Mr. Root informed Mr. W. that the proposition was to elect sheriffs by the people.] So much the worse, said Mr. W. By these elections party and faction would prevail more among the people, in a tenfold degree, than it now does. You cast among them the apple of discord, and much shall we lament it.

Gentlemen, he said, had expressed a strong desire to cut up by the roots all motive to party feelings. He was as anxious as any one to eradicate such feelings, and indeed they ought not to be spoken of by, or influence, any member of this Convention. An honourable gentleman from Albany, (the Chancellor) for whom he entertained the highest respect, had even gone so far as to express his fears lest our progress hereafter would be rapid towards the tempestuous sea of corruption. But was this the way to allay party feelings, or stop our career? Every gentleman acquainted with the country, must know, that, although the sheriff was to be eligible for only one term, yet the object was worth contending for by the most powerful men in the country; and his numerous deputies, with their retainers, would be for months engaged in making interest and forming parties in support of their several pretensions to be his successor. In this way, heat and contention, and petty intrigue would be made the order of the day, and every county in the state would be thrown into convulsions.

But the evil would not stop here. The sheriff would enter on the execution of his office, warm from the contest with the friends and opposers of his election under his eye, and with his pocket full of paper and parchment sins of the people, which he might visit upon his unfortunate enemies with a most cruel and destructive vengeance. While, on the other hand, he would be apt to execute the functions of his office against his friends with so lenitent a hand, that no monies would be collected from them, except through rules and attachments almost without end. This, he contended, would be the natural course of things, under such a system. Indeed, we had before us in one state, as he was informed, an example of this scheme once tried, and found so fraught with evils that it was laid aside, He alluded, he said, to New-Jersey.

But, sir, there is one great principle of government, which some of the wise and learned gentlemen who have spoken on this subject, seem wholly to have overlooked or neglected. It was one which the greatest writers and statesmen have ever deemed essential to the permanence of every government; indeed, a principle, without which no government could well carry on its plans or enforce its laws. It was this:—That there should be some channel through

which the remotest parts of the state would feel the influence of the central administration. Was it so, or not? Could it be expected, he asked, that without a community of feeling, without a single tie of interest, any government would long hang together? What ligament, what cement, would there be to bind the head and the remote parts together? Without this, the government would be like a rope of sand. By this plan of electing judges, justices and sheriffs, which some gentlemen seem to dwell upon with rapture, but which, he said, appeared to him so preposterous and dangerous, you allow none of this influence to exist. What better channel of influence can be found, than that of the magistrates and executive officers of the counties? The chief executive of the state was bound to have the laws enforced, and it must be done through these officers; not that they were to be subject to his commands, but they ought to feel an interest in complying with his reasonable requests. The time might come, when it would be necessary to call in aid some other principle in support of government than that of patriotism, which, alas! had been found, in some cases, rather weak among us. The plan proposed would make our government no better than a confederacy of counties; by which we shall have a wheel within a wheel, or rather a wheel without, not in the least moved or influenced by any mainspring or machinery within. It would be somewhat like the confederacy of these United States, that existed before the present constitution was formed, and was found so deficient in this sound principle of government.

He did not wish to enlarge upon this subject; and he was thankful that the committee had indulged him thus far. He considered this a most important subject, and apprehended that some gentlemen, by avoiding one mischief, were running directly into another.—He wished to treat every gentleman with delicacy; but said he could not forbear to observe, that he thought, from the observations he heard delivered the other day by a wise and experienced statesman, for whom he felt the highest respect and veneration—he alluded, he said, to the honourable gentleman from Queens—that the high and elevated sphere in which that gentleman had acted for many years, had rendered him less qualified than many men of far less talents, to judge of the regulations necessary and proper to be adopted for our country towns and counties. Information of this sort did not so much depend on great talents as practical experience. He intended nothing disrespectful; and concluded by expressing a strong hope that the motion of the gentleman from Delaware would be rejected.

Mr. King stated, that although with regard to justices of the peace he had thought it proper to vest their election in the people, it did not, therefore, follow, that *sheriffs* were to be appointed in the same manner. Very different considerations were applicable to the two subjects. In the election of the magistracy in the different towns of this state, the *capacity* of the people to choose, was alone drawn in question. There was no unfitness, in the nature of things, in making the appointment in that mode; although he was perfectly satisfied with the plan which had been adopted by the Convention; the great object being to dissever and disconnect the magistracy from the central power at the seat of government, and to destroy this extensive means of patronage which might be improperly employed, and was not necessary to sustain the government.

But the case of the sheriffs was far different.

In all the free governments of this country, it had been determined to divide political power into great departments, one of which was the executive. He was charged by the constitution with the faithful execution of the laws. He was responsible to the people for the performance of this trust. If there was any power which in its very nature required to be indivisible, it was the executive. The unity of the executive was a quality indispensable to the perfection of that department of the government. To divide that power, is to weaken and destroy it. The legislative and judicial departments may be wisely divided and subdivided; but all experience shews, that the unity of the executive must be preserved, in order to preserve its strength and its efficacy. All schemes, by which the executive was attempted to be divided, had failed: and that of the Directory in France was a signal failure, attended with disgrace and disaster. The same might be expected from any plan of a council, presided over by the

supreme executive magistrate; or of any other, by which he was attempted to be deprived of the ordinary means of executing the laws.

The appointing power is not in general *necessarily* connected with the executive department. Portions of it may safely and discreetly be given to other departments. But that portion of the appointing power which is executive in its very nature, must be given to the executive department. Such is the power of appointing to the office of sheriff. The magistracy is not necessarily connected with the execution of the laws by the executive department. It is the lowest order of the judiciary. But the sheriffs are ministerial officers, directly connected with the supreme executive. *He* is responsible for the execution of the law, and *they* are the agents and the instruments with which he is to execute them. How can he be responsible for the faithful performance of this important trust, if you deprive him of the only means by which he can execute it? As to executive offices, you must therefore re-embody and re-unite them with the executive power, or destroy it by rendering it utterly incapable of performing its high functions.

The sheriffs should be responsible to the executive, and derive their authority from that source. What is the analogy of the federal government? The marshals of the districts—are they appointed by the states, or by the people in the respective districts? No, sir; they are appointed by the supreme executive of the union—by the president and senate. Why are they thus appointed? Because the president is responsible for the faithful execution of the laws of the union, and for the supremacy of its power in the several states where the marshals are stationed. And if true in the United States, is not the same thing true in the several counties of this state? How can the governor be justly held responsible for the faithful execution of the laws, if he has no control over those by whom all processes, civil and criminal, are to be executed; who may command the power of the county and of the neighbouring counties to their aid in case of resistance? Suppose a peculiar state of property in particular districts of country—suppose a spirit of insubordination and discontent to exist in certain counties, which it was a part of the appropriate duty of the executive to repress and subdue: would you furnish him beforehand with the excuse, that though he had the best disposition to perform his duty, you had deprived him of the means of doing it, by vesting in other hands the nomination of the agents through whom alone he could enforce obedience to the laws? Is it not risking the good order and harmony of society thus to weaken the responsibility of the executive? In order to secure this responsibility, the executive power must be united, consolidated, and connected in all its ramifications with the supreme government of the state. He did not mean by this, that the appointment of every subordinate, local, and municipal officer, was to be made by the central authority *here*. He had, on a former occasion, expressed his opinion that all *such* officers and magistrates, might safely be elected in the respective cities, towns, and counties; and he had still the same desire that this great mass of patronage and power might be broken up into minute fragments, and disposed throughout the land: but he trusted the Convention would not misapply this idea, and extend it to officers who were directly connected with the supreme executive, and essential to preserve its unity—to secure its responsibility, and the faithful and energetic execution of the laws.

Gen. Root would not make use of such arguments as had fallen from his honourable friend from Oneida, to oppose the proposition. This gentleman, together with a gentleman from Albany, had expressed great fears that we were about to launch our political barque into a tempestuous sea of civil liberty. I have no such fears for our political barque. I can unite with the illustrious Jefferson in saying, that I prefer a tempestuous sea of political liberty, to a calm of despotism. We are told by the gentleman from Oneida, and by the gentleman from Queens, that it is necessary to have a connexion between the executive and these great county officers; it is necessary there should be some ligament or cement to bind them together: and by whatever other bonds of union they would have them bound, they have not condescended to inform us. Some ligament or cement to bind these parties together, as the old council bound its dependants—to cement the sheriff to the car of the executive. I should prefer

some of the newly invented hydraulic cement, to this kind that the executive is to furnish through his high appointing authority. But we are told that the sheriff is an executive officer, and should therefore be under the direction of the executive of the state, whose duty it is to see the laws executed. Is the sheriff to be a humble tool in the hands of the executive, as an axe or a hammer in the hands of the carpenter? The old council of appointment have sometimes undertaken to appoint sheriffs that were not very agreeable to the feelings of the governor; and have not these sheriffs done as well as the humblest tool of the executive? Have not the sheriffs appointed the last winter, discharged their duty as well as if they had been thus cemented to the governor? The gentleman from Queens has told us, that the sheriffs should not be appointed by the people, because the marshals of the different states are not appointed by the individual state where they have jurisdiction. The gentleman is well acquainted with the confederation of the United States, and the principles of government; but would the gentleman compare the counties in our state, with the states in the union as they respect the general government? Have we, then, fifty-two independent republics in this state, all combined in one great confederated republic? Are people to be informed, that because the marshals of the different states are appointed by the president of the United States, the sheriffs in the different counties of this state must be appointed by the executive? The honourable gentleman from Oneida tells us, that if the sheriffs are elected, they will visit the sins of their pockets upon the people, which of all others are the most terrible to a man that is in debt—they will collect the seven phials of wrath into one great bottle, to pour out upon the heads of those who may oppose their election. Would he be any more likely to wreak his fury on those who opposed his election, than on those who might oppose his appointment by a council? I think not. It is proposed that the sheriff shall hold his office for a given time, and then be ineligible for a time, by which means he cannot turn his influence, while in office, to the purpose of a re-election.

The gentleman from Oneida is fearful that this method will stir up commotion at the elections; and I don't know but fighting, and every thing else that is direful.

The little commotion that would be excited, would be only that healthful excitement which warms and invigorates. It is necessary that there should be a little warmth and bustle occasionally, if it does not amount to boxing matches. It keeps the political blood in a genial circulation, and prevents it from running cold, and the heart from ceasing to palpitate. If your sheriff and clerk are elected by the people, they will feel a greater duty imposed on them, to discharge their office with fidelity. They will not be necessarily drawn into the political cabals at the seat of government. They will not be looking to party divisions, and sub-divisions, and waiting with painful anxiety to see which party is to predominate, that they may not be found in the minority, as the gentleman from New-York, (Mr. Edwards) has told us he was, in the assembly, there being but twenty-six of the party to which he belonged, and he had to wait three or four years before his party prevailed. They will look to the people for patronage, and I am unwilling to place them in such a situation, that when their political party may happen to be the minority, they will be compelled to surrender all, and begin a warfare to build up a new party, and stand in confusion, wondering which way a political party will shape itself before they know which way to go. If they are elected by the people, they will know where to look for their support, and how to merit it.

I have no opinion of having sheriffs and clerks in the country, appointed and removed at the will of individuals in great cities. In the county where I reside, there have been sheriffs and clerks that could not obtain a majority of votes in the county. The people were justly displeased, and I am anxious that they should be satisfied.

A division having been called for on the first part thereof, relating to sheriffs, the same was decided in the affirmative as follows:

AYES.—Messrs. Bacon, Baker, Barlow, Bowman, Briggs, Brooks, Burroughs, Carpenter, Carver, D. Clark, R. Clarke, Collins, Cramer, Day, Dubois, Duer, Dyckman, Edwards, Ferris, Fisher, Frost, Hees, Humphrey, Hunt, Hun-

ter, Hunting, Huntington, Hurd, A. Livingston, M'Call, Moore, Park, Pitcher, Price, Pumpelly, Radcliff, Rhinelander, Richards, Root, Rose, Sage, N. Sanford, R. Sandford, Schenck, Seeley, Sharpe, Sheldon, I. Smith, R. Smith, Spencer, Stagg, Starkweather, Steele, D. Southerland, Swift, Sylvester, Tallmadge, Taylor, Townley, Townsend, Tuttle, Van Fleet, Van Horne, Van Ness, Ward, E. Webster, E. Williams, Woodward, Wooster, Young—71.

NOES.—Messrs. Beckwith, Birdseye, Breese, Brinkerhoff, Buel, Child, Eastwood, Fairlie, Hallock, Hogeboom, Howe, Jay, Jones, Kent, King, Lansing, P. R. Livingston, Munro, Nelson, Paulding, Platt, Porter, Reeve, Rockwell, Ross, Russell, Seaman, Ten Eyck, Van Buren, J. R. Van Rensselaer, Van Vechten, A. Webster, Wendover, Wheaton, N. Williams, Woods, Yates. —36.

The residue of the section relative to county clerks, was then taken and carried without a division.

Mr. Munro offered an amendment as follows : "But the county shall never be made surety for the sheriff, nor responsible for his acts." Carried.

GEN. ROOT then moved that the word "*including*" be stricken out of the 3d section, and the word "*except*," be inserted. Carried.

MR. N. WILLIAMS moved to insert the words "*cities and*" next preceding the word "*counties*", in reference to the offices of the sheriffs and clerks, and after some debate thereon, he modified the same by proposing to insert after the words county clerks, "the sheriff, register, and county clerk of the city of New-York."

But before any question was taken thereon, the committee rose, reported progress, and obtained leave to sit again ; and the Convention adjourned.

WEDNESDAY, OCTOBER 10, 1821.

The Convention assembled as usual. Prayer by the Rev. DR. CHESTER. The minutes of yesterday were then read and approved.

THE APPOINTING POWER.

On motion of MR. N. SANFORD, the Convention resolved itself into a committee of the whole on the appointing power. Mr. Lawrence in the chair.

MR. N. WILLIAMS. I had the honour to make a motion yesterday, to insert, after the words, "county clerks," the words, "the sheriff, register, and county clerk of the city and county of New-York ; but really, sir, having no wish to embarrass the plans of the honourable gentlemen who represent the city of New-York for its municipal government ; and much less to entail upon the citizens of New-York a principle that will prove so destructive, in my opinion, to its future peace and happiness, as well as to every part of the country where it is adopted, I will take the liberty of withdawing the motion.

MR. EDWARDS renewed the motion which the gentleman from Oneida had just withdrawn. Carried.

MR. TOMPKINS offered the following amendment :

"And the governor may remove any such sheriff, clerk, or register, at any time within the said three years for which the said sheriff, clerk, or register, shall be elected, giving to such sheriff, clerk, or register, a copy of the complaint or charge against him, and an opportunity of being heard in answer thereto before any decision or removal shall be made."

JUDGE VAN NESS said, he believed it was agreed on all hands, that it was necessary to have a power somewhere sufficient to remove sheriffs in case of incapacity to discharge the duties of that office with propriety ; and in cases of mal-conduct ; although a man might be worthy and well qualified, when he was appointed, he might, before his term expired, become bankrupt, or lose

his character for integrity, which would render it unsafe for him to retain the office. Cases might occur, where local disaffections to the government, might render it important that this officer be changed. If it was necessary to have this power any where, it was necessary to have it where it could be exercised with firmness. It was his opinion that the governor would be the most proper person to exercise this power; as he could have no possible motive, except that of the public good, for he could not possess the power of filling the office with his friend, after it was vacated—even if he could, he would be cautious how he offended the people of a county, for the sake of gratifying a friend. It had been suggested, that the officer ought to have an opportunity to make a defence—and that the executive should make known the reasons for which he removes; this, he thought, might sometimes be improper. There might sometimes be cogent reasons for a removal, which would be improper to disclose—there might be certain immoral disqualifications which would be indelicate to make known. The honourable President of the Convention, had added to the proposition which was offered, such improvement as he deemed wholesome; but he did not think there could be any possible inducement for the executive to abuse this power, if it was submitted to him alone. His responsibility to the people annually would be a sufficient guard against an improper exercise of his power.

Mr. Tompkins said that by dividing his proposition, the gentleman from Columbia might try the sense of the Convention on the power of removal without cause assigned.

Gen. Root wished the cause of removal might be known and assigned. He was no friend to gubernatorial delicacy. We had seen too much of it already.

Judge Van Ness modified his proposition, which was, however, withdrawn, at the suggestion of Mr. Tompkins, and Mr. T.'s was substituted.

Mr. Tompkins moved that his proposition be divided into two parts. Carried.

The question on the first part, relating to the removal of sheriffs, was taken and carried.

The question was then stated to be on the second part of the proposition, requiring the governor to assign reasons for such removal, and to give to the sheriff an opportunity of appearing in his own defence.

Chancellor Kent was opposed to the proposition, on the ground that it might be expedient for the governor to remove sheriffs without assigning his reasons. He thought the executive should have both the appointment and removal of those officers. The governor was the great sheriff of the state, and the sheriffs should be considered in the light of deputies.

Chief Justice Spencer approved of the proposition. No officer should be removed for arbitrary cause, nor without good reasons. He could not concur in opinion with his honourable colleague, (Mr. Kent.) It was desirable to break into fragments and disperse the appointing power; and this Convention would never consent to give the governor the power of appointing and removing his own sheriffs. He thought there was no necessity of departing from a valuable principle.

Mr. Tompkins was confirmed in the expediency of retaining that provision in his amendment. It is the professed object of all to exclude party. But if this clause be rejected, a sheriff may be displaced in secret, and without cause assigned, which may be merely a political one, and thereby his character impaired by supposing it to proceed from moral disqualifications known to the executive. It would really be conferring the power of appointment on the governor, and introducing that very party spirit which we ought to exclude.

Mr. Radcliff was opposed to the last part of the proposition of the honourable gentleman from Richmond.

Gen. Root again expressed himself in its favour. He was not in favour of yielding the reputation of his fellow-citizens to the delicacy of the executive. Suppose a case in which the political parties in a county are nearly balanced. He removes the successful candidate, who is opposed to him in politics. He being ineligible for the next three years, and not like John Wilkes, capable of being thrust back upon the executive, and being placed *hors combat*, is effectually placed in the back ground. The same game is continued, until all the

popular candidates are laid on the shelf. In this way he may vacate the election of the people, and render nugatory the provision which the Convention had passed.

The question was then put and carried.

The chairman then read the 10th clause.

Mr. Radcliff moved to strike out the words, "except the (mayor of) the city of New-York."

Mr. Fairlie opposed the motion. He thought it was inexpedient to make the mayor the mere creature of the common council.

Mr. Jay was also opposed to the motion of Mr. Radcliff. He said the mayor of the city might otherwise be opposed to the executive, and it was important that there should be an union and harmony of sentiment between them. The mayor of that city has great power, which is more arbitrary within its jurisdiction, than that of the president of the United States. He (Mr. J.) was not in favour of accumulating the power at the seat of government, but there was a moderation to be observed in all things, and he feared we were verging to an unreasonable jealousy of the general appointing power. The mayor was the preserver of the peace, and the head of the police of that city. It was proper, therefore, that he should be independent of the city in the exercise of his power, which might require him to suppress mobs, of which there had been one of three or four days continuance in that city.

Mr. Munro concurred with his honourable colleague. The proposition would reduce the mayor to a mere chairman of the corporation.

Mr. Sharpe supported the motion; and hoped if the mayors of other cities were to be appointed by the common council, New-York would not be an exception. A great part of his judicial power had been given to the first judge.

Mr. Radcliff had hoped that the principle of having officers elected by the people had been established by this Convention; and therefore he would not enter into a discussion of its propriety. Have we not examples on this subject? The city of Philadelphia appoint their mayor by the common council, and no evils are known to result from that method there. In the city of New-York, the duties formerly incumbent on the mayor are now divided. He is merely a ministerial officer, who attends to the police and good order of the city. He, to be sure, appoints carmen and marshals; but he should apprehend no danger from him on that account. With respect to this city being more exposed to mobs than other places, he did not think it was the case. We have been told by a gentleman from Westchester, that within his recollection there was a great mob in that city. It was not a political mob, but a mob of doctors.

Mr. Fairlie said the mayor and sheriff of New-York were charter officers, and with these we ought not to meddle.

Mr. Jay said there had been tumults in the city of New-York, and it was fair to argue to the future from the past. He had not said there had been political mobs, but it was immaterial to him if his house was to be torn down, and his life jeopardized, whether it was done by a political mob, or any other kind of mob. He was in the political minority, and for that very reason he wished the executive of the city might act in union with the executive of the state, that the stronger arm of the latter may be lent to the former, to protect him from outrages. It was indeed peaceable at present in that city. He hoped it would so continue. But it was not correct to say that because the sun shines to-day, we shall have no storm to-morrow.

In relation to the powers of the mayor—it is true that they have been divided—but he is not divested of them. In that division, all his judicial powers are distinctly reserved, and it was only to relieve him from too heavy a burthen that a separation was authorized, but he retains the same powers he ever had, and may at any time resume their exercise.

Mr. Sharpe said, if mobs and tumults should arise, a mayor elected by the corporation would be as well qualified to quell them as a magistrate elected at Albany.

Col. Young thought that the aldermen and assistant aldermen were not of a character to encourage or favour tumults and mobs. He believed the corporation was a very proper tribunal for the appointment of the mayor.

Mr. Munro said that the mayor and corporation would completely control the elections of the city, if the former were appointed by the latter.

Mr. Van Buren would vote for the motion, although it was not contemplated to appoint the mayor by the general appointing power, as had by some been supposed.

The Chief Justice remarked, that the corporation of New-York had heretofore been, and now were, composed of men who would not be likely to encourage mobs. A case, however, might occur, when men of a different character might be elected, and when nothing could save the city. He should, however, vote for the motion, as he believed the corporation better qualified than any power at Albany.

Question taken, and decided as follows:

AYES—Messrs. Bacon, Barlow, Beckwith, Birdseye, Bowman, Brinkerhoff, Brooks, Burroughs, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dubois, Duer, Dyckman, Eastwood, Edwards, Fenton, Ferris, Fish, Frost, Hallock, Hees, Howe, Humphrey, Hunt, Hunter, Hunting, Huntington, Hurd, Kent, King, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Paulding, President, Price, Pumpelly, Radcliff, Rhinelander, Richards, Root, Rose, Russell, Sage, Sanders, N. Sanford, R. Sandford, Schenck, Seaman, Seeley, Sharpe, I. Smith, R. Smith, Spencer, Stagg, Starkweather, Steele, Swift, Sylvester, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Ness, Van Vechten, Ward, A. Webster, E. Webster, Wendover, Wheaton, E. Williams, Wooster, Young—87.

NOES—Messrs. Buel, Child, Fairlie, Hogeboom, Jay, Lansing, Munro, Park, Platt, Rockwell, Sheldon, I. Sutherland, Van Horne, J. R. Van Rensselaer, N. Williams, Yates—16.

Mr. Edwards moved to strike out the words "and clerks."

After some desultory discussion, the question was put and carried.

The fifth section of the report, as amended, was then read.

Mr. Van Buren said, that in the amendment of the gentleman from Orange, the term of office of justices was left in blank. He moved that the blank be filled with three years. One, two, and four years were also moved.

Gen. Tallmadge proposed an amendment—that the justices hold their offices for four years, and a fourth part be elected annually, to give stability to the magistracy.

Chief Justice Spencer said, in some towns there would be but one justice, in others two and three, &c. It would therefore be impracticable to appoint a portion of them annually.

The question on four years (the longest term) was put and lost.

The question on three years was put and carried.

The clause as follows was then read and approved.

"That any person so appointed a justice of the peace, may hold his office for three years, unless removed by the county court, or court of common pleas, for causes particularly assigned by the judges of the said court. And that no justice of the peace shall be so removed, until notice is given him of the charges made against him, and an opportunity afforded him of being heard in his defence."

The sixth section was then read in the words following:

§ 6. That all officers under the authority of the government of this state, in the city of New-York, whose appointment is not vested in the common council of said city, or in the governor, by and with the advice and consent of the senate, shall be appointed in the following manner, to wit :—The inhabitants of the respective wards of that city, qualified to vote for members of the legislature, shall elect one person in each of the said wards, and the persons so elected, shall constitute a board of electors for the appointment and removal of all such officers. That immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be, into three classes. The seats of the electors of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at

the expiration of the third year, so that one third may be chosen every year ; and if vacancies happen by resignation or otherwise, they shall be supplied by the wards in which they happen, in the manner above mentioned. And that no such elector shall be eligible to any office within their gift, during the time for which he shall be elected.

Mr. Radcliff had hoped that some gentleman would provide a substitute for this clause; but as it had not been done, he must move to have it stricken out, that some other appointing power could be provided for the city of New-York. If the committee would take it into consideration, they would find that the city of New-York had many officers not required in the other parts of the state, which rendered it more difficult to settle the appointing power in that city than in any other part of the state. The city and county of New-York were co-extensive—there were no county regulations distinct from those of the city—which was different from the other cities and counties in the state. This rendered it necessary that they should have a different regulation from those places which have both city and county regulations in common. The plan proposed by the gentleman from Orange, for the appointment of justices of the peace, and adopted by the committee, would not answer for the city of New-York: the court of common pleas, in the city of New-York, was composed of the aldermen of the city and first judge—they all belonged to the corporation except the first judge ; therefore, for the court to make a nomination, distinct from the nomination of the supervisors, would be absurd. The plan adopted for other places than the city of New-York, does not at all apply to the case of that city—it would, in fact, amount to this, that the common council should make the appointments ; and therefore I am of the opinion that it would be the simplest and best way, to give to the council the appointment of such officers as are in the counties appointed by the supervisors and judges of common pleas. As the sheriff, clerks, and mayor are provided for, we have but one class of officers corresponding with the officers of counties ; and that is the justices of the peace. Mr. R. went into a minute description of the different orders of justices in the city of New-York, and their respective duties. He concluded by expressing an opinion that the common council would be as proper a body to exercise this power, in appointing justices of the peace, as any other body of men ; and he should not object to the first judge associating with them, although it would probably be as well to omit him. With respect to all other officers of that city, not otherwise expressly provided for, he should be willing to leave it to the discretion of the legislature to determine ; and with that view he would offer his amendment, as follows :

" That the justices of the peace in the city and county of New-York, including the official justices, the justices of the marine court and the district justice, and the clerks of the said justices, respectively, be appointed by the common council of said city ; and all other officers in said city whose election or appointment is not provided for by this constitution, shall be chosen, or appointed within the said city, in such manner as the legislature may from time to time direct."

Mr. Van Buren could not discover why the common council which had been thought a proper body for the appointment of the other officers, was not also adequate to other trusts. He therefore submitted the following proposition :

" That all the city or state officers in the city of New-York whose appointments are not otherwise provided for in this constitution, shall be appointed by the common council of the said city and county and shall hold their respective offices during the pleasure of the said council."

Mr. Munro moved that it be laid on the table.

Mr. Radcliff supported this motion. The corporation had a vast patronage ; and it was very questionable whether it ought to be extended. He hoped that the proposition of the gentleman from Otsego would lie on the table.

Col. Young would give to New-York the same mode of appointment, and a like tenure of office, as had been given to the country. He would go so far as

to expunge the sixth section. He thought the common council equally capable of making appointments, as the supervisors. He was willing, in the event of a tie, to let the first judge decide.

Mr. Fairlie wished it might be postponed till to-morrow.

Mr. Munro hoped we should not dispose of offices to the amount of half a million in haste.

Mr. Van Buren concurred with the gentleman from Westchester (Mr. Munro) in believing that this subject required deliberation.

Mr. Tompkins hoped we should postpone and reflect on this subject. From his past and present connexion with that city, he knew the importance of the question.

The Chief Justice thought we should pause before we gave such an enormous power to the municipal authorities of that city.

Mr. Radcliff thought we might at least take the question on striking out the clause.

Mr. Jay was in favour of the postponement. The common council, he said, was the legislature of that city. They had the power of taking private property for public use, and of assessing others to pay for it. They had power to make contracts—a power which they had pretty liberally exercised—very necessary though very despotic powers in relation to the preservation of health—and about four hundred offices were already at the disposal of that body. If state patronage would poison the senate, as gentlemen had supposed, he would submit it whether there was not equal reason to fear that city patronage might poison the common council.

Judge Platt begged leave to make one suggestion before the question was taken. He had voted against making the mayor appointable by the corporation, and being in the minority he could not move for a reconsideration. He wished some gentleman in the majority would move a reconsideration of that vote. The subject was postponed till to-morrow.

The seventh section being under consideration, was read in the following words:

§ 7. That all the officers which are at present elected by the people, continue to be so elected; and all other officers, whose appointment is not provided for by this constitution, and who are not included in the resolution relative to the city of New-York; and all officers who may be hereafter created by law, may be elected by the people, or appointed as the legislature may from time to time by law direct, and in such manner as they shall direct.

Gen. Tallmadge proposed to amend the section so as to prohibit the legislature from referring any part of the appointments submitted to their disposal to the general appointing power.

Mr. Van Buren was opposed to it, and wished to know the reasons that could be alleged in its favour.

Gen. Tallmadge went into an explanation of his views in offering the amendment. He disapproved of the most that had been done on this subject. No part should be left to the legislature.

Mr. Van Buren said if the gentleman from Dutchess found we were going wrong, he should have put us in the right way. He was not anxious that the appointments should be left to the legislature; but if we interfered with the discretion of that body, we ought to make some other specific disposal of them.

Mr. Birdseye said a few words, when

Mr. R. Clarke moved that the seventh section, and the amendment thereto, be postponed till to-morrow. Carried.

TENURE OF OFFICE.

§ 1. The Treasurer to be chosen annually.

§ 2. Secretary of state, comptroller, surveyor, and commissary general, to hold during the pleasure of the legislature—removable by concurrent resolution.

§ 3. Sheriffs to be appointed annually, ineligible after four years, and to hold no other office at the same time.

§ 4. Judges of the courts of common pleas (except the first judge) and surrogates to be appointed for five years, removable by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended.

§ 5. Attorney general to hold his office during the pleasure of the governor and senate, removable by the latter on the recommendation of the former.

§ 6. Recorders of cities by the same tenure, except that the recommendation of removal shall state the grounds.

§ 7. Mayors of cities to be appointed annually.

§ 8. Clerks of courts and district attorneys to hold during the pleasure of the courts appointing them.

First section read. Carried.

Second section read.

Mr. Van Buren moved to strike out "secretary of state." Carried.

Third section read.

Mr. Van Buren moved to strike out the whole section. Carried.

Fourth section read.

Mr. Munro moved to strike out the words "except the first judge."

After some discussion, Mr. Munro withdrew his motion.

It was moved by Mr. Nelson that the fourth section be postponed till to-morrow.

Gen. Root opposed the motion, and so did

Mr. Briggs. Should we be wiser to-morrow than we were to-day? If so, postpone our business till to-morrow.

Mr. I. Sutherland was in favour of postponement. It would be better taken in connexion with the judicial report.

The question for postponement was lost.

It was then again moved to strike out the words "except the first judge." Carried.

Mr. Munro moved to strike out "surrogates."

Mr. Van Buren hoped not; and after some explanation,

Mr. Munro withdrew his motion.

Fifth section read.

Mr. Van Buren moved to insert "secretary of state and," before attorney general, *their*, for *his*—*offices*, for *office*. Carried.

Gen. Tallmadge moved to strike out the words "during the pleasure of," and to insert "for years, unless sooner removed by." Carried.

It was then moved to fill the blank with three; and carried.

Mr. Duer moved to strike out "removable by the latter," &c. Carried.

The section was then read as amended, and carried.

Sixth section read, adopted.

Seventh section read and adopted.

Eighth section read.

Gen. Tallmadge moved to strike out "pleasure of," and insert "for years, unless sooner removed by." Carried.

Moved to fill the blank with three. Carried.

Mr. Tompkins moved to reconsider the fifth section. Agreed to.

Mr. Van Buren offered the following resolution: "That the secretary of state and attorney general hold their respective offices for three years from the time of their appointment, unless sooner removed by the senate on the recommendation of the governor." Carried.

Judge Van Ness moved to reconsider the sixth section. Agreed to.

Mr. Van Buren moved to strike out the sixth section. Carried.

He further moved to reconsider the fourth section, for the purpose of inserting "recorders of cities," after the words "courts of common pleas." Agreed to, and the insertion made accordingly.

Gen. Tallmadge proposed to reconsider the second section. Agreed to.

He then moved to strike out the words "during the pleasure of," and insert "for years, unless sooner removed by." Carried.

He proposed to fill the blank with three years. Carried.

The question was then on filling the blank in Mr. Duer's amendment respecting justices of the peace.

It was proposed to fill the blank with three years.

Mr. Munro thought it would be better to leave the time of meeting indefinite. It was not necessary to turn out and appoint at stated times, but merely to fill up vacancies.

The Chief Justice thought it would be well for the meeting for general purposes to be once in three years—to fill vacancies, as often as necessary.

Mr. Van Buren moved to postpone the further consideration of the clause till to-morrow.

Mr. Sheldon proposed to amend in such manner, that the judges of the courts of common pleas should be elected by the people.

The question was taken by ayes and noes, and decided in the negative as follows:

AYES—Messrs, Baker, Brinkerhoff, Brooks, Hurd, N. Sanford, Sharpe, Sheldon, E. Webster, Young---9.

NOES—Messrs. Bacon, Barlow, Beckwith, Birdseye, Breese, Briggs, Buel, Burroughs, Carpenter, Carver, Child, D. Clark, Clyde, Collins, Cramer, Day, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Ferris, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Huntington, Jay, Jones, Kent, King, Lansing, Lefferts, Livingston, M'Call, Millikin, Moore, Munro, Nelson, Park, Paulding, Platt, Porter, President, Price, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, Sage, Sanders, R. Sandford, Schenck, Seeley, I Smith, R. Smith, Spencer, Stagg, Starkweather, Steel, D. Southerland, I. Sutherland, Swift, Sylvester, Tallmadge, Taylor, Ten Eyck, Townsend, Tripp, Tuttle, Van Buren, Van Horne, Van Ness, J. R. Van Rensselaer, Van Vechten, Ward, A. Webster, Wendover, Wheaton, E. Williams, N. Williams, Woods, Wooster, Yates—97.

Mr. Tompkins then renewed the motion of Mr. Van Buren, that it be postponed till to-morrow.

Mr. Van Buren proposed to reconsider the 8th section on military appointments. Agreed to.

He then moved to strike out the word "militia" before officers, that the appointment of civil, as well as militia officers, might be by the governor, during the recess of the senate.

Mr. E. Williams opposed, and it was lost.

Gen. Root said the question before the Convention would be on the whole clause—which he moved to have stricken out. Carried.

Chancellor Kent proposed to reconsider the 4th section on civil appointments. Agreed to.

The committee then rose, reported progress, and obtained leave to sit again.

In Convention, on motion of Mr. Radcliff, *ordered*, that the report, as amended, be printed. Carried.

Mr. Yates moved that the committee of the whole be discharged from the further consideration of the report on the appointing power, and that it be referred to a select committee, and offered a resolution to that effect.

The motion was opposed by Messrs. Van Buren and Van Vechten, and lost.

Judge Van Ness offered the following amendment.

And the supervisors and judges of the court of common pleas, (except in the city and county of New-York,) shall in like manner appoint the several officers following, to wit:—auctioneers, coroners, inspectors of turnpike roads, and inspectors of beef and pork, &c.

Which said officers may be removed, and vacancies from time to time filled, in like manner, as is provided in relation to justices of the peace.

Gen. Tallmadge moved that the report of the committee on the legislative department, be made the order of the day to-morrow—Carried.

Mr. Fairlie offered the following resolution.

Resolved, That the 19th article of the constitution of this state, ought to be abolished.

Resolved, That it be referred to a committee to consider and report to the Convention, what provision be proper to be adopted in relation to the appointment of senators of the United States.

Referred to the committee, of which Mr. Radcliff is chairman.

Mr. N. Williams offered the following resolution : "that the secretary of state be required to lay before the Convention, a list of the civil officers in the city of New-York."

On motion of Mr. Root, Adjourned.

THURSDAY, OCTOBER 11, 1821.

The President took his seat at the usual hour, and no chaplain being present, the minutes of yesterday were read and approved.

The following communication was received from the secretary of state, pursuant to the resolution of yesterday :

STATE OF NEW-YORK,

Secretary's Office, Albany, October 11, 1821.

Sir—In obedience to a resolution of the honourable the Convention of this state, of yesterday, requesting me "to lay before them a list of the civil officers in the city of New-York," I have the honour of submitting to them, through you, the enclosed list of the civil officers, holding their commissions in that city, under the council of appointment.—Some of the officers in that list may have ceased to act, or are disqualified from acting; but there is nothing in the possession of this department, enabling me to ascertain their number.

I have the honour to be, very respectfully, your obed't. servant.

J. V. N. YATES, Secretary of State.

The Hon. Daniel D. Tompkins }
President of the Convention. }

A list of the civil officers in the city of New-York, under the council of appointment.

	No. of Officers.
First judge,	1
Mayor,	1
Recorder,	1
Surrogate,	1
District attorney,	1
Sheriff,	1
Coroner,	1
Register,	1
Clerk of the city and county,	1
Clerk of the oyer and terminer and sessions,	1
Clerk of the sittings, and circuit court,	1
Special (or police) justices,	3
Police clerk,	1
Justices of the marine court	3
Assistant justices,	6
Auctioneers,	36
Resident physician,	1
Commission of the health office,	1
Health officer,	1
Harbour masters,	2
Master and wardens of the port,	6
Branch pilots by way of Sandy Hook,	28
Inspector general of staves and heading,	1
Cullers of staves and heading,	18
Assistant state sealer,	1
Inspector of flour,	1
Do. beef and pork,	1
Do. fish,	3
Do. fish oil,	1
Do. pot and pearl ashes,	5
Do. lumber,	17
Do. hops,	1
Do. leather,	2
Do. distilled spirits,	1
Inspectors of the state prison at New-York,	7
Commissioners of excise,	1
Directors of the bank of America,	2
Do. do. New-York,	2
Do. do. Mechanics,	1
Do. do. Phœnix,	1
Do. do. Franklin,	2
Examiners in chancery,	5
Masters in chancery,	71
Commissioners to acknowledge deeds, &c.	114
Public notaries,	343
Total,	709

On motion of Mr. Sheldon, the foregoing communication was referred to the committee of the whole, when on the appointing power, and on motion of Mr. Van Ness, ordered to be printed.

THE LEGISLATIVE DEPARTMENT.

The Convention then resolved itself into a committee of the whole on the report of Mr. King, from the committee on the legislative department. [Vide page 141.]—Mr. Van Buren in the chair.

Mr. King explained the views and principles by which the committee, of which he is chairman, were governed in making their report.

He presumed, the committee would take up the several branches of the report in their order: the first section related to a branch of the constitution already established, and would require no explanation or arguments in favour of its adoption; it proposes, that the number of members of the senate and assembly remain as established. The state is at present divided into four senatorial districts; the whole number of senators is thirty-two, who are divided into four classes, to the end that one-fourth part of the whole number may be elected annually; giving each district a voice in the new representation. This number is adequate to serve as a check upon the other branch of the legislature. He was not aware, that it would be wise to alter the number.

With respect to the assembly, he must confess, it would be more agreeable to his feelings and views of government, if the number were less than that to which it might hereafter arrive, viz. one hundred and fifty.

At present the number stands at one hundred and twenty-six; it is probable, at the time of the next apportionment, it will amount to one hundred and forty; On this subject he would submit one or two remarks. There was no precise rule established as to the proportion between the electors and the elected; there were considerations, however, on this subject, which might be worthy of some attention. It had been shewn, in this country as well as in others, that the number could be too far extended for the convenience of debate and deliberative discussion; and large bodies of men were more liable to run into extremes of passion and zeal, than bodies less numerous. He was inclined to believe, that a body, not exceeding the present number of the assembly, (one hundred and twenty-six,) was sufficient for any valuable purpose; as well with respect to local as general interests, which would naturally come before the legislature. The local districts, which they would represent, were not so large but they might bring together all the necessary information concerning their respective interests and desires. When assembled, they would be numerous enough to deliberate and determine with propriety upon the relative merits of general and local claims.

The congress of the United States was, in his opinion, too numerous for convenience in doing business. The experience of every gentleman must have shown, that the larger the body of men, the more liable they were to cabals and factions.

Another consideration:—There is not, perhaps, a country in the world where they have so many legislators engaged in making laws, as in the United States. When we look at the individual states and the general government, we find the amount of legislation far exceeding that of any other part of the world: it is salutary and advantageous to the community, periodically to compare all the different circumstances arising out of the various interests in society, and to provide for contingencies which must occur. The representatives of the people, by communicating with each other, bringing together the various views of the local districts which they represent, and comparing them with the larger interests of the state, derive mutual benefit from each other—each becoming acquainted with the condition of every other portion of the community.

As small a number as can consistently effect all these objects would be desirable, as the expense must increase in proportion to the number.

This body of men are important, not only as it respects their power of making salutary laws, but they have the control of the treasury and property of the state; and it has sometimes happened, that they have made a more free use of

the public funds than was deemed expedient by the people. Too small a number ought not to be entrusted with these important concerns, and if the number is increased it will necessarily increase the expense accordingly.

From these considerations it has seemed proper to the committee to recommend the amendment of 1801, as a part of the constitution which we are about to form---that the number of senators remain as it is, and the number of the assembly increase to one hundred and fifty as provided by that amendment.

Gen. Root moved to strike out the first and second sections of the report, and to insert in lieu thereof the following amendment :—

1. The senate shall consist of thirty-six members, to be elected for three years. On the return of every census, the state shall be divided into twelve districts, as nearly as may be, equal in the number of electors, and each be entitled to three senators, one of whom to be elected annually. The districts shall be composed of contiguous territory, and not altered till the return of another census.

2. The assembly shall consist of one hundred and forty-four members, to be elected annually. On the return of every census, they shall be apportioned among the several counties, according to the number of electors in them, respectively ; and shall not be altered, till the return of another census. But each county shall have one member, and no county shall have more than six members. No new county shall be erected, unless it contain one one hundred and forty-fourth part of the electors in this state.

In support of the amendment Mr. R. observed, that he presumed it was well established, that senators ought to be elected for a longer term than members of the assembly; indeed, example and experience had shown the propriety of that plan. It was highly important that the senate should be a stable and permanent body, in order to which it was advisable to have it divided into classes, by which a certain number of seats might become vacant, and be filled annually, preserving at all times a majority of old members, by whose experience the new ones might annually be benefited—the whole serving as a salutary check upon the other branch of the legislature.

He had various reasons for proposing the number of thirty-six for the senate, as there were now thirty-two, eight of whom would go out the first of July next, he would propose that instead of electing eight, there should be twelve elected, and continue to elect twelve annually, and vacate twelve seats annually, by which means there would at no time be more than one-third new members in the senate.

The arrangement could be so made by the legislature, if not the first year, it might soon after, that each of the twelve districts into which he proposed to divide the state, would annually elect one senator; whereas by the report of the committee, seventeen districts are recommended, some of which would be entitled to three senators, and others to but one. This was contrary to the principles of equal representation, as some districts would have a fresh representative annually, and others only one in three or four years.

Some had proposed to have thirty-two districts. This was objectionable, as they would not have an election in the same part of the state oftener than once in three or four years; consequently, the voice of these districts would not be annually heard in the senate; besides, they would almost forget the time when an election for senator was to happen.

It would not be as familiar to them as the election of assemblymen, and they might not care so much about it. The senate would not feel that influential impulse which an election was calculated to give it—this, he thought, was an important consideration. The senate would be more apt to feel their responsibility to the people, and reverence their creator, when the public voice was annually heard.

He thought thirty-six members for the senate could not be too many for this large state ; he was aware that the larger the body of men, the slower, but more deliberately they would act. It was a complaint that legislatures were apt to legislate too much instead of too little. Thirty-six would not be too many for a deliberative assembly. They would not then look like a select committee·

With respect to the assembly, he could not see any good reason for having the number increasing. There was a time when it was proper—when the state was in some parts a wilderness. The country is now settled, and there will be no new district of country to be represented; the only difference that will occur, is in the increase of population. He was of the opinion that one hundred and forty-four was a very good number for the assembly. It would answer all the beneficial purposes of a representative government. One hundred and forty-four in the assembly, with thirty-six in the senate, would be as four to one, which had been considered a very just proportion.

He did not know that there was any particular magic in the number 12, that should induce him to take a gross for the assembly, and three dozen for the senate, having 12 senatorial districts; but it was a number that had been highly respected before the publication of the new system of theology which had been handed into the Convention yesterday. (*Magic Harmonicus.*)

There were provisions in the amendment which he offered, by which each county in the state would be represented in the assembly: and that no two counties should be united for electioneering purposes. There have been political parties in our legislature, and there will be again; I would put it out of their power to sever counties or to unite them for political purposes, when their interests for civil purposes are not at all connected. There is a provision that no county shall have more than six members; if their population shall entitle them to more than six, let them be divided for the purpose of election. The injury of a large delegation from one county had been forcibly felt. At one time the city of New-York sent thirteen members—for the last seven years, eleven. There was a time when three or four hundred votes in that city changed the political character of the state, by throwing the majority into the assembly, and the appointing power into the hands of *peace party* men, to the great annoyance of the patriotic part of the community.

The election in the city of New-York, in 1800, changed the president of the United States—but should there be a change the other way, even you, Mr. Chairman, (Mr. V. B.) would deplore the event.

There was another objection to so great a representation from one county, and that was with regard to the fractions, which in smaller counties, were thrown away; but in New-York procured them an additional member---instead of eleven members, they were justly entitled to but ten. Besides all this, their all coming from the same place, with the same interests and same views, carries irresistible force in the pursuit of a favourite object. The representation from New-York could effect great changes in the political aspect of the state, all acting in concert—eleven in number would make a difference of twenty-two by going from one side to the other.

There is a provision in my amendment inhibiting the erection of new counties, unless they have a population sufficiently large. As for those that are already erected, let them remain; but hereafter let no county be erected until it is entitled to one member in the assembly. Let the fact be ascertained that they have one one hundred and forty-fourth part of the electors in the state before they are set off.

Mr. Briggs was pleased with the amendment of the gentleman from Delaware, but he should move to strike out "forty-four," making the number of members of assembly one hundred, which he thought sufficient for all useful purposes.

Gen. Root was willing his amendment should be read in blank.

Gen. Tallmadge wished the subject might be divided, and the senate taken last.

Mr. Edwards moved, that the further consideration of the amendment offered by the gentleman from Delaware be postponed till to-morrow. We had, in too many instances, lost sight of the reports of the select committees, which had been digested with great labour and care, and wasted much time on crude and indigested amendments.

Gen. Root replied to the gentleman from New-York, (Mr. Edwards,) and remarked that if the amendment were postponed, the two first sections would also be postponed.

Mr. Edwards rejoined, and spoke for some time on the remarks that had fallen from the gentleman from Delaware.

Gen. Tallmadge was opposed to the postponement. It was unfair to refuse any member an opportunity of offering an amendment.

Gen. Root again spoke against postponing his amendment.

Mr. Burroughs said that a postponement would amount to a rejection of the amendment.

Mr. King could see no benefit to be derived from postponing till to-morrow. He agreed with the gentleman from Delaware, that if the amendment were postponed, the two sections of the report must also be postponed.

Mr. Edwards said he was willing to relieve the committee from any embarrassment on the subject of order;—and thereupon withdrew his motion for postponement.

Mr. King remarked, that in making the apportionment, the select committee did not include foreigners nor slaves. It was made upon the basis of free male citizens. With regard to the districts, the committee would have preferred to make as many as there were senators, if they could have found it to be practicable without dividing counties. As the inhabitants of counties were associated and brought together for various purposes, they were better acquainted with each other than they could be with persons of an adjoining county, even if less remote in point of distance. This fact was observable in the intercourse and communication between towns. The committee had therefore thought it inexpedient to break in upon the counties, and had adjusted the ratio of population as well as they could consistently with that principle. If a better plan could be devised, the committee would not pertinaciously adhere to their own. Mr. K. was disposed to leave as much of the old constitution as they could, and to destroy no part of it without good and substantial reasons. He thought the plan of dividing the state into twelve districts would be found to be inconvenient. The larger the districts, the more room there would be for the operations of intrigue. The candidates for office were less known by their constituents, who were therefore less able to judge of their comparative merits. This evil had been felt in the great western district.

The senate, at present organized, was large enough for all the purposes of legislation and appointment, so far as the appointing power is committed to them; and certainly large enough for the exercise of its judicial powers. Four years gives more strength to that body, than a shorter term, and although there was perhaps no rule or standard by which to judge with exactness, yet perhaps we could not resort to a safer guide than experience. The constitution of the United States fixed the duration of that senate at six years. No inconvenience was known to have resulted from that more protracted period. Why then alter it to three? He thought that body ought not to be further weakened by shortening the term of office.

Gen. Tallmadge had been in favour of making the number of districts equal to the number of senators; but he was aware of the difficulties which that project presented, He was therefore in favour of dividing the state into eight senatorial districts, with four senators from each. A great object was to have the power of the elected return by periodical rotation to the people. But he would preserve the old constitutional term of four years. It was important to give stability to that body. But he was not satisfied with the apportionment that the committee had made. The district comprising Putnam, Dutchess, and Columbia, had a population of 96,000, and were to elect two senators, whilst Rensselaer and Washington, with a population of only 78,000 were to elect the same number. It was too unequal in its operation, and he could not vote in its favour.

Mr. King made a few remarks in reply, when

Mr. Bacon proposed to have thirty-two districts, with one senator from each.

Col. Young was opposed to the motion, and was in favour of acting on the report of the committee. He spoke at some length on the original report and the amendment.

Mr. Sharpe foresaw that we should soon be involved in the same difficulties

we had experienced on former occasions, by deserting original reports, and acting on amendments. He hoped we should adhere to the report, and build upon it.

Gen. Root again explained and urged his amendment, and spoke in reply to the gentleman who preceded him in the debate.

Judge Platt thought we should waste much time by wandering from the report of the committee, and acting on the amendment offered by the gentleman from Delaware. He then read in his place, and offered the following resolutions :

Resolved, That the senate shall consist of 32 members, to be elected for the term of four years ; that the state be divided into 32 districts, to the end that one senator be elected in each district ; and that the first apportionment be made according to the last census of free persons under the laws of the United States : and

Resolved further, That after the first election, the senators shall be apportioned according to the electors only, and not according to the number of free inhabitants.

Resolved, That it ought to be referred to the same select committee to settle and report the details upon the principles above stated.

Judge Van Ness observed, that the Convention had now approached another important part of its business, and he was unable to discover a single consideration that should divert their minds from such a plan as might best answer the purposes of the community.

The number of senators specified in the constitution was, it is true, apportioned according to the counties; but this arose from the necessity of the case. Our fathers were then organizing a new government, and no census had been taken of the people on which an apportionment could rest. The case was otherwise at present The assembly was then apportioned among the electors—the senate among the freeholders. The latter distinction has now been exploded, and the electoral census was made the basis of apportionment. Mr. V. N. was aware that the principle now contended for, would diminish the representation of the city of New-York ; and a peculiar difficulty also arose from the circumstance, that by the last census, no electoral discrimination was made, as relating to militiamen, and highway labourers, who are now let in to vote. The census was taken upon the principles of the constitution as it then stood. How, then, could we arrive at a just apportionment in relation to that class of voters ? He thought there was a difficulty, which it was not easy to avoid, by adopting either the report of the select committee, or the amendment of the gentleman from Delaware. Notwithstanding the profound respect which he entertained for that committee, and for the chairman of it, he could not but think that the report they had made was unjust, and repugnant to public opinion. He was not opposed to the first section of the report;—but in relation to the second, he thought it was too unequal in its operation to be entitled to the sanction of the committee. Mr. V. N. then entered upon a detailed argument to shew the inconvenience, inequality, and consequent injustice of the apportionment as reported by the select committee. He said a great object which all were desirous to attain, was to bring home to the people a personal knowledge of the candidate who was to represent them, and the smaller the district, the more perfect would that knowledge be. He thought there was nothing of importance to be gained in that respect by the proposal of the honourable gentleman from Dutchess, (Mr. Tallmadge,) of dividing the state into eight districts. It might about as well remain at four as eight, as it respected the personal acquaintance which the constituent might be supposed to possess with his representative. Mr. V. N. was, therefore, in favour of dividing the state into thirty-two senatorial districts. It would have, he said, the advantage, among others, of permanency—and would be altered but little from one census to another. He was aware that there were some well founded objections to this mode ; but he would defy human wisdom to point out a mode to which there would not be well founded objections. The great object was to avail ourselves of that which combines the greatest excel-

tencies, with the fewest defects. He thought there was no great practical benefit to be derived from an annual election, as some gentlemen seemed to suppose. The only important purpose it could serve, would be annually to infuse a portion of the existing public feeling into that body. But if public sentiment was strongly drawn to a particular object, it would diffuse itself throughout the state. It would not be confined to a local section, but would be conveyed to the destined port, as well through one channel as another.

It had been said that a minuter division than seventeen districts, would require a division of counties. In the first place, he doubted the fact. But admitting it were so, he would ask whether an arbitrary line would prevent people from knowing each other? He was disposed always to unite contiguous territory—but was it not a fact, that persons residing near a county line were often better acquainted with the inhabitants of the adjoining county than with their own? It was the commercial mart, not the divisional county line, that confined or extended their acquaintance and communication. Mr. V. N. then endeavoured to shew by a computation, that fewer fractions and inequalities would result from a partition into thirty-two districts than by any other division that could be made. He also adverted to the congressional districts, which were made up of integral counties and parts of adjoining counties, and particularly referred to that of Columbia, in which three towns from the county of Dutchess were included. But no inconvenience, he observed, had resulted from that association. So, also, the first and second wards in the city of New-York had been added to Long-Island, and no complaints had been heard of its injurious consequences. Indeed, it might in its operation lead to a more enlarged and generous sympathy between those who had been previously disconnected, and tend to repress any clanish spirit that might pervade a particular territory. He was, therefore, in favour of dividing the state into thirty-two senatorial districts, and also into as many assembly districts as there were members in that body; but as it was inexpedient for the Convention to enter into details, and as they had not the proper and necessary evidence before them, he was in favour of declaring merely the number of the districts that should be made, and leave its detailed apportionment to the future disposal of the legislature.

Mr. Tompkins enquired of the chair whether it would now be in order to offer an amendment?

The Chairman, remarked that if the amendment related to senatorial districts, it would not be in order.

Mr. Tompkins observed that he had prepared an amendment, which coincided with the views of the gentleman from Columbia, (Mr. Van Ness.) He read a part of his plan, which proposed to divide the state into thirty-two districts, and that the basis of apportionment should be a census, to be taken in 1823.

The Chairman said that the proposition was not in order.

Mr. King thought the plan of the gentleman from Richmond (Mr. Tompkins) impracticable, since the apportionment must be made before the census would be taken. He also adverted to another difficulty that would arise from the division of counties, which was, that no designation had been made in the late census of the respective towns.

Mr. N. Williams said, he did not intend to enter very minutely into the subject before the committee; but would take the liberty of making a few remarks, expressive of his views, which should not detain the committee long. With respect to the difficulties anticipated, in dividing the state into districts, he was confident that more had been feared than would be realised. Many of the counties contained about the number of inhabitants which would entitle them to a senator, others might be united without dividing them into towns, so as to have but small fractions; and in cases, where it was necessary even to divide counties; he did not imagine any great inconvenience would result, as the territory would be contiguous, and of course the manners, habits, and interest of the inhabitants nearly the same.

Could the plan be effected, he should prefer having as many districts as there are senators; as the greatest evil of a representative government like ours, was the inconvenience of having the candidate for office so far removed from many of his constituents. The only remedy for this evil, was to have the districts

small: if, however, the plan which he had mentioned, could not be adopted, he should prefer the proposition of the gentleman from Dutchess, to that of the gentleman from Delaware, for this reason, it would preserve the period of service at four years, which he considered none too long. He would rather see the time increased than diminished, and upon this plan each district might annually send a new member, which he considered essential and important. He was pleased with the idea of bringing home to the people the candidates who were to receive their suffrage, and with affording them an opportunity of annually expressing their sentiments to the senate, through the medium of a fresh representative. Upon the plan proposed by the gentleman from Delaware, there would probably be some difficulty in reducing the present incumbents. If it was done by lot, they might all fall in one part of the country, which would leave a portion of the state unrepresented.

One important objection to the report of the committee was, that it would not provide for an annual expression of the public voice, in the different districts in the state. By the plan proposed by the gentleman from Dutchess, that evil would not exist. The difference in the size of the districts could not make a material difference, whether the plan of the gentleman from Delaware or that of the gentleman from Dutchess, was adopted.

He did not apprehend so much difficulty in applying any plan to the state generally, or the western part particularly, as to the great and commercial city of New-York, which would, undoubtedly before many years contain half a million of inhabitants. With respect to that city, there did appear to be considerable difficulty in the adoption of any plan; but he hoped they should be able in the end to adopt some method, which would render the senate a stable and wise body; as on it depended, in his estimation, the welfare and prosperity of the state, so far as legislation could conduce to that end.

Mr. Duer would make but few remarks, and confine them to a single point, which related to the division of the state into thirty-two senatorial districts. He was very certain that whether the number of thirty-two or thirty-six were adopted for the number of the senate, it would be impossible, upon that principle, to avoid breaking in upon the unity of the counties. If any gentleman could doubt of this fact, he would discover, by reference to the census, that it could not be accomplished without dividing more than thirty counties in this state. It would also be worth consideration, that the voice of the fractional part of one county annexed to another would be entirely lost and disregarded. Such had been the fact in relation to the very instance to which the gentleman from Columbia, (Judge Van Ness) had adverted. The annexation of those towns might be very agreeable to the people of Columbia, but was by no means satisfactory to the three towns of Dutchess. Their voice was too feeble to be heard. He thought gentlemen ought not to call on the committee to reject the plan contained in the report, merely on the ground that it contained objectionable features, until they had presented a plan liable to fewer objections in its various parts, and susceptible of clear and unquestioned practicability.

Col. Young said, that the facts stated by the chairman of the select committee (Mr. King) convinced him, that it would be impracticable to divide the state into thirty-two districts.

Mr. P. R. Livingston thought that there had been enough disclosed to enable the Convention to act understandingly on the motion of the honourable gentleman from Delaware, (Mr. Root.) It had been boldly stated by the gentleman from Columbia, (Mr. Van Ness,) that no complaint had been made of the annexation of the three towns in Dutchess to the county of Columbia, in the formation of a congressional district. The allusion had been unfortunate. If a marriage had ever taken place in which there had not been a consent of parties, and where a divorce was devoutly wished for by the fairer, but weaker party, it was in the case to which the honourable gentleman had referred. Mr. L. would not at that time enter into an argument on the main question, but moved that the two first sections of the report of the select committee, together with the amendment proposed by the honourable gentleman from Delaware, be postponed until to-morrow.

JUDGE VAN NESS replied. The desire of divorce, he said, could not possibly be stronger on the part of the towns of Dutchess, than that of the county of Columbia; that county had not sought for the connexion, and had no wish to continue it. He denied, however, that these towns of Dutchess had been oppressed; they had had as great a share of the representation in congress, as their numbers entitled them to.

The question was taken on Mr. Livingston's motion, and carried.

The third section was next under consideration.

COL. YOUNG moved to strike out the word "inhabitants," in the first line of the third section, for the purpose of inserting in lieu thereof the word "electors."

MR. NELSON suggested a modification of the motion, so as to read "inhabitants and electors;" to which Mr. Young subsequently assented.

CHANCELLOR KENT thought the question of retaining the term "inhabitants," was entitled to much consideration. It had not indeed been distinctly brought before the select committee, of which he had the honour to be a member, but he was disposed to think it ought to be retained.

There now appeared to exist considerable alarm of the overbearing weight and influence of the city of New-York. He had been desirous to restrain the right of suffrage within such bounds as would exclude that kind of population which, in large cities especially, could not be expected to exercise it with purity and discretion. But after the limitation was made, the representatives came into the legislature not merely to represent the electors, but the inhabitants also, male and female—widows and minors—and the property that they might respectively possess.

The city of New-York was the pride and glory of the state, and although discretion was required in its governance, it was entitled, and ought to enjoy, its full and proportional weight and influence.

MR. EDWARDS. I presume, sir, that it is the intention of this Convention to distribute equal and exact justice to all the people of this state. This intention will be defeated by the adoption of the proposition of the honourable gentleman from Saratoga, (Mr. Young.) Consider, sir, for one moment, the operation upon the city of New-York, of the rule that representation is to be apportioned according to the number of electors: In that city, no person is bound by law to work on the highways, and they have but very few highways to work. In the country, every person above twenty-one years of age, is required by law to work on the highways; you have consequently adopted a rule, with respect to the right of suffrage, which must necessarily be partial in its operation. The consequence of it is, that multitudes are admitted to the enjoyment of the elective franchise in the country, when corresponding classes of society are excluded from it in the city. To make this subject still more plain, I will suppose that the elective franchise was confined to those alone who labour on the highways. The consequence of this would be, that not a man in the city of New-York would be permitted to vote. Then, if the proposition is adopted that representation is to be apportioned according to the number of electors, it would follow that that city would not have a representation in either branch of the legislature. Now, sir, if this proposition is adopted, though that city will not be entirely disfranchised, yet it will be, so far as it goes to deprive it of the representation which it is entitled to in consequence of its comprising a population who are neither taxed nor perform military duty, and who, if they resided in the country, would be required to work on the highways.

It must be fresh in the recollection of every gentleman who hears me, that the highway qualification was opposed by most of the members from New-York, and among other reasons, because it would be partial in its operation—because it extended privileges to every man above twenty-one years of age in the country, which never would be extended to one half of the men in the city. That rule, however, was established, and the consequence is, that, so far as it respects the choice of the chief magistrate of the state, that city will not have a voice by any means in proportion to its population. Now, sir, the gentleman, not content with this, is pushing his points further; and the very fact of our being deprived of our rights heretofore, is urged as a reason why we should be deprived of our due representation in the legislature of the state.

But it is urged, that, according to the present provisions of the constitution, representation is to be apportioned according to the number of electors. True: and it is also true, that, according to the present provisions of the constitution, certain peculiar privileges are conferred upon the freeholders.

The patriotic, venerable, and venerated men who formed our constitution, did, to be sure, deem it wise to insert that provision. But, sir, we were then but just emerging from a state of subjugation to a monarchical government. The principles of civil liberty were then, as it were, in their cradle. We have had the benefit of practising upon them for nearly half a century; and I think I may now say, without giving offence, that they are now better understood. We have, by an overwhelming majority, expunged the freehold qualification from the constitution. We have disclaimed the supremacy of property, as well as of birth, and of privileged orders. We have proceeded upon the broad principle, 'that all men are free and equal;' and in regulating the elective franchise, we have endeavoured to govern it by such rules as would only exclude those whom we were apprehensive would not exercise it with independence or integrity. We have proceeded upon similar principles with respect to them, which we have with respect to our wives and children. They were not included; not because their rights were not equally dear to us with our own, but because public feeling and their good, as well as the good of the whole, required it. And, sir, because we have not thought proper to invest them with the elective franchise, does it follow, that they are not to be duly represented through those who are their natural guardians? because they are not permitted to vote, that they are not to have any weight in the government? No, sir; they are represented by us. So all, who live in the same community with those who exercise the elective franchise, have a common interest with them, that the community should have a due representation in the legislature. Laws must be equal in their operation; and all who live in the same community will be sure of having their rights equally respected. People, living in different parts of the state, in different states of society, and pursuing different avocations, have, of course, as communities, different interests; and it is equally important to them, whether they are voters or not, that the community in which they reside should be duly represented. Sir, have we deprived the freeholders of their exclusive privileges, upon the broad ground, that we would tolerate no privileged orders for the purpose of establishing another class, the electors? And are we now going to sanction the principle, that the government is made for the *electors*, and not for the people? Are we going to sanction the principle, that the government is not made for the people, but for a certain privileged class? If so, let the apportionment be according to the electors: if not, it must be according to the number of inhabitants.

I hope, sir, that no gentleman is indulging any unreasonable prejudice against the city of New-York: if any such prejudices exist, a little reflection must remove them. Pray, sir, what is the city of New-York, and who compose it? Why, it is the great mart of your state: it is to that place where you send the produce of your farms and your manufactories; the inhabitants of it are your agents, your factors. They purchase your produce, and explore every sea in search of markets for it, and return with the products of every clime to minister to your necessities and comfort. It is true that they have accumulated great wealth: but this wealth is necessary to enable them to transact your business to your advantage. The inhabitants of that city enjoy no exclusive advantages. You, and your sons can, at your pleasure, participate in all the benefits attendant upon their local situation. There is, sir, throughout, a community of interest between them and you: the city and country are equally necessary for each other, and equally dependant upon each other: and as well might the head of the human body jangle with the other members, as the country with the city. If great wealth is there concentrated, the country enjoys the benefit of it: for the city now pays one-fourth of the taxes of the whole state.

We ask no exclusive privileges. All we ask is justice; equal and exact justice: we want nothing more. And you can, as consistently with justice, provide in express terms, that the country shall be represented in proportion to its population, and that the city shall only be represented in proportion to two-

thirds of its population, as to adopt the proposition now made; for the effect will be the same.

After some desultory discussion between Messrs. Sharpe and Young, on motion of the former, the committee rose, reported progress, and obtained leave to sit again.

Mr. Briggs moved, that the Convention hereafter meet at 10 o'clock.

Mr. Eastwood opposed the motion, and it was lost.

Adjourned.

FRIDAY, OCTOBER 12, 1821.

The President took the chair at nine o'clock, when the minutes of yesterday were read and approved.

THE LEGISLATIVE DEPARTMENT.

The Convention then went into committee of the whole on the unfinished business of yesterday, (the legislative department.)—Mr. Van Buren in the chair.

The question before the committee, was stated from the chair to be upon the modified proposition of Mr. Young, to insert in the third section, (directing a state census to be taken in 1825) before the word "inhabitants," in the first line, the words "electors and."

Mr. President hoped that the amendment offered yesterday by the gentleman from Saratoga, to make electors the basis of representation, would prevail. He certainly was not disposed to take from the city of New-York any portion of the representation to which she should be justly entitled; but it must be admitted, that there would always in that city, be a great number of foreigners who never contemplated to become citizens, and who, therefore, ought not to be taken into the account, in determining the representation to which that city should be entitled. Again—there was now in the city of New-York, a population of free people of colour, greater in amount than the whole white population of the county of Richmond—and this was a species of population which they had reason to believe would be very large in that city. He could not consent that this city, from a population of aliens and free blacks, should have a greater share in the representation of the state, than the county of Richmond would have for its whole number of white citizens. He should, he said, vote for the amendment, as affording a more just, and equitable rule than that proposed by the report of the select committee.

Mr. King said he saw no reason to object to the amendment proposed, of inserting the words "electors and" in the first line, it would not vary the plan of the report.

Col. Young said he meant to follow up that motion by others, which would effect the object he had in view. He would move to insert, in the ninth line, after the word "census," "according to the numbers of the electors in such districts or counties respectively."

Mr. King. It was not the intention of the committee to have free people of colour, or aliens, taken into the account, but to limit to the free *white citizens*.

Col. Young. The term inhabitant, used by the committee, would, he said, embrace both aliens and free blacks. The apportionment of senators, and of members of assembly, under the old constitution, were both regulated by the number of electors for each. This rule had not been limited to the apportionment of senators according to the number of freehold electors, as might possibly be inferred from some of the arguments which had been used. An experience of more than forty years had shown it to be a just and equitable rule; why then part with it for an untried scheme? Some of the gentlemen from the city of New-York, complained of the application of this, because by the qualifications established for electors, there would be many admitted to vote,

and therefore counted in the country, who, if in the city, would not be entitled to vote, and would not be taken in the estimate of numbers by which the apportionment was to be made. But, he would ask how this had happened? A large majority of the delegation from that city had voted against extending the right of suffrage to this class, and had assigned as a reason, that it would include an unsound portion of their population, and such as they supposed could not safely be entrusted with the right of voting. Why, then, find fault with having them excluded in fixing the ratio of representation? He hoped they were not desirous of having this unsound and floating population of the city, placed on the same footing with the purer population of the country. He contended that the rule of taking the electors only, was the only just rule, and one which would operate more equally and uniformly. The population of the city of New-York would vary many thousands, depending on the state of its commerce and its health. When commerce flourished, they would be crowded with foreigners—when it languished, both foreigners and their own citizens would resort to other places. So also, in respect to its health—when sickly, great numbers would leave it, and the footing of a census of that city would vary many thousands, depending on the time when taken.

Judge Van Ness, in reply to some remarks of Mr. Tompkins, thought that Richmond would not always belong to New-York; and of course not always be placed in the shade. There would be no difficulty, however, on this subject, if his proposition and wishes were regarded, of having as many senatorial districts as there were senators to be chosen. He had, he said, yesterday given it as his opinion, that the apportionment ought to be founded on the number of electors; he was now satisfied, that this would be unjust as it regarded the city of New-York; the regulation, which had been adopted respecting the right of suffrage, would, as had been explained, operate very unequally, and very much against the city. But of this he did not complain: he had yesterday said, that the country ought to guard itself against the influence of the city; that was his opinion still; but this was not to be done by adopting an unjust and unequal rule of apportionment. If the state should be divided into either eight or twelve districts, the one, in which the city of New-York should be located, would always be controlled by its influence. This was one reason why he was in favour of having single districts; then the country will be separated from the city, and will act independent of its control. He would have no objection to let the city remain a district by itself, if the delegation wish it: no injury could arise from that.

With respect to the apportionment, he thought a rule might be adopted which would be satisfactory to all. He would suggest the propriety of taking the *free white citizens* only, into the account. By this, the large population of free blacks, and of aliens, in the city would be excluded, and the rule would operate equally over every other part of the state; and if the amendment of the gentleman from Saratoga, should be rejected, he would move an amendment conformable to the suggestions he had just made.

Mr. Van Vechten said, the question was, whether the representation should be determined by the number of inhabitants, or by the number of electors only.

The principal argument in favour of having it determined by the number of electors only, was, that it was the plan adopted in the Convention of 1777, and recognized in that of 1801. In determining upon electoral qualifications, a large number of the inhabitants in the city of New-York have been deprived of the privilege of voting, on the ground of their unworthiness to exercise that power. It is said, that in the country, there are many who are equally unworthy, but are admitted to the enjoyment of this privilege from the circumstance of their doing work upon the highways, or paying an equivalent therefor.

What is the reason these men in the city of New-York do not work on the highways? It is because they have not an opportunity; there is no such thing known in the city. The effect of this, is, to exclude a great number of electors, by establishing a rule which does not apply to their case. We have, in the first place, narrowed the number of their electors by establishing a rule

which applies to all parts of the state, except the city of New-York. The same man who would be a voter in Kings county, by coming into the city, would be deprived of voting, because there is no highway work to be done. After depriving that city of a great portion of electors, it is proposed to make the remaining number a criterion by which to regulate their representation; and by so doing, we shall make a rule that will operate unequally upon the inhabitants of the state.

We all profess to have the same object in view, that of making an equal distribution of the privileges and burthens of the community, as far as constitutional provisions can accomplish it. It is alleged that if their representation is in proportion to their population, it will be greater than they are entitled to have, and because we have done them injustice in one respect, it is right to follow it up. This is not correct.

The rule of representation must always be more or less arbitrary; but the the idea appears to have been entertained by some gentlemen present, that none are represented in our legislature, but those who have a right to a voice in the election of its members. This is a mistake—all classes are represented. There may be a vast amount of property owned by persons not possessing the right of suffrage; and is this to have no weight, or receive no consideration? All classes of the community have a right to representation—and having proceeded thus far in admitting a large portion of voters in the country, we are bound in duty to render an equivalent to the inhabitants of the city of New-York. He should, therefore, be opposed to the proposition of the gentleman from Saratoga, (Mr. Young.)

Mr. Briggs replied to the gentleman from Columbia, (Judge Van Ness,) who, it appeared, was now for making reparation for what had been done to the prejudice of the city of New-York. The gentleman, said Mr. B. has told us, that the result would be the same, whether the one or the other rule should be adopted. If so, he could not perceive why all the discussion had taken place, or why gentlemen should wish to depart from the rule established under the old constitution, and form a new one, when they all agreed it would make no difference in the result. He would, therefore, be in favour of retaining the old rule, which had been tried, and which had been found to answer very well.

Mr. Russell thought that most persons who are allowed to vote on the ground of highway labour in the country, would have been admitted on other principles. But as he was disposed to quiet the apprehensions of the city, and to grant equal rights to all, he was in favour of the suggestions of the gentleman from Columbia, (Mr. Van Ness.)

Mr. Radcliff proposed to amend the amendment of Mr. Young, by appending thereto the following qualification: "according to the number of free inhabitants, excluding paupers, aliens, and persons of colour not taxed."

He contended that there was unquestionable injustice in admitting highway labour as a qualification, without any adequate equivalent to the corresponding class of citizens in New-York. He hoped that gentlemen would not be disposed to put their hands to a constitution that should contain such glaring and monstrous injustice. He claimed that the character of the people of the city was equally good with that of the towns and villages. He thought there was an unreasonable jealousy of that city. The history of the state would prove, that the city was comparatively retrograding in its population. Our houses were empty, and our people retiring to the country. Even in the most prosperous times, it was barely able to retain its ratio. Its good fortune was connected with and depended on the country. He asked for no advantage of the country in favour of the city—but he did ask, in the name of eternal justice, that the same measure should be meted out to the metropolis, which the counties in the country enjoyed.

The Chairman decided that Mr. R's amendment could not be received until the motion of the gentleman from Saratoga (Mr. Young) was disposed of.

Mr. P. R. Livingston was opposed to the motion of his honourable friend from Saratoga, (Mr. Young,) and he regretted to witness any expression of hostility on the part of country members towards the city of New-York. He be-

lieved there was no political Ætna in the city, nor any lion in the country. There was an unity of interest between the metropolis and the other sections of the state that ought to be preserved. And even if the country had the power of obtaining a paltry, temporary advantage, it would be unworthy of them to exact it. The proposition of the honourable member from New-York was calculated to place them all on the same footing, and would receive his support.

Mr. Sharpe had hoped that the proposition of his honourable colleague, (Mr. Radcliff) would have removed all the objections that had been raised, and urged by the gentleman from Saratoga (Mr. Young). It would be recollected that exertions were made to defeat the adoption of a proposition some days ago, in relation to the militia voters, which would have disfranchised a third part of the voters in that city, if the attempt had been successful. He had to regret that, on several occasions, a disposition had been shown to encroach upon the privileges of that city. He had frequently seen the same disposition in the legislature; but little did he expect that its spirit would have been manifested in this Convention. The city of New-York, said he, pays one fourth part of the taxes of the state. Would it be fair to deprive us of so great a share of representation, after having already given us a less extent of suffrage than any other part of the state, and thus allowed the country to lord it over us?

The proposition of my honourable colleague shuts out all paupers, aliens, and people of colour not liable to taxation; which is going a great length to meet the wishes of gentlemen in the country.

There ought to be a mutual affection between the city and the country, for the city was made for the other parts of the state, and the other parts of the state were made for the city. We should consider in this Convention, that if we oppress that city, we oppress ourselves; and as we are not acting alone for the present, we should consider that by doing injustice to that city, we may be oppressing our children. Let us be able to say hereafter, that if we have voted wrong in this Convention, we have voted as our consciences told us was right; but do not let it be said of the country, that the city members opposed the election of justices of the peace, and we have, in return, deprived them of an equal representation.

Col. Young was opposed to having New-York represented in proportion to the number of her inhabitants, as she had a much greater share of floating and unsound population than other parts of the state. It appears now, to be generally admitted that the result, at the present time, would be nearly the same, whether they adopted the one rule or the other: but sir, said Mr. Young, the rule, which shall now be established is not for the present time only, we must take into consideration its probable future operation. The proportion of unsound population, which is always found congregated in large commercial cities, will continually increase with the growth of the capital, and the influence which that city would derive, from having this population taken into the account in settling her representation, would in process of time, prove injurious if not dangerous to the independence of the country.

The gentleman from Columbia, (Judge Van Ness) had yesterday, he said, warned them to guard against the growing power and influence of that city. But to-day, he calls upon us to manifest a spirit of generosity towards it; he now thinks that the rule of apportionment, which he had yesterday most pointedly condemned, should be adopted, as a generous peace offering, to quiet the complaints which had been made in her behalf. It was not long since, continued Mr. Young, that a gentleman from New-York, (Mr. Sharpe) had avowed his determination to deal magnanimously towards his political opponents; he would not, he said, stop to enquire, whether the magnanimity of the one had produced the generosity of the other; gentlemen had a right to be magnanimous and generous whenever and however they pleased; he would, for himself, rest satisfied with enquiry into the fitness and propriety of the measure under discussion, aside from any considerations of this kind. He could not see, that the gentleman, who represented the city of New-York, had any just reason to be dissatisfied with the rule he had proposed; it was not owing to the country that the regulation, respecting the right of suffrage had not been more liberal; they had themselves zealously opposed a proposition to render it more

liberal, and they ought not now to find fault with its operation on the rule of apportionment. It was not any innovation which it was attempted to introduce; but to continue a rule which had existed for near half a century, and which all agreed had never been a cause of complaint.

Mr. President. He would not object to the proposition of the gentleman from New-York, (Mr. Radcliff:) If the aliens and free people of colour, were excluded in the estimate of numbers, he would consent that the apportionment should be made on the basis of population.

Mr. Ross. There is no doubt that we have created an inequality by admitting labourers on highways to vote. It would therefore be correct, just, and equal, to admit principles that should restore universal and uniform operation to the right of suffrage. The payment of taxes by that city he did not think entitled it to any particular privileges, as they were really paid principally by the consumers of the commodities from which the revenue was derived. Still, on the grounds of equality, he was in favour of the proposition which had been suggested by the honourable gentleman from New-York, (Mr. Radcliff.)

Mr. Fairlie hoped, really, that the subject might be settled in some way. In all parts of the house—among old political friends, and enemies, New-York stared him in the face. For his part, he was heartily sick of the hostility which had been manifested towards that city. If gentlemen are tired of us, let them separate us into an independent government. The topic had become extremely trite and repugnant to his feelings, as a citizen of New-York.

Gen. Tallmadge was in favour of the proposition of the gentleman from New-York, (Mr. Radcliff.) The character of the population of the city of New-York, was not, probably, different from that of the country: nor did he believe that they had a greater proportion of the vicious and profligate, than in other parts of the state.

Gen. Root observed, that he was sorry that the members from the city should imagine that those from the country were arrayed against them. It was, indeed, rather singular that when questions peculiarly appertaining to the country came up, gentlemen from that city, who knew little more of the country than what they could gather from rambling through the mud of Nassau and Pine streets, should think themselves so wondrous wise and competent to settle and adjust country concerns. But he could assure those gentlemen that he felt no hostility whatever to the city of New-York.---Of what oppression do they complain? Do we purpose to take away a vested right? Or is it merely to continue a course that has been practised upon for forty-four years? If a law, which, during that period, nobody has complained of, be oppressive let them be oppressed. It was but the continuance of a burthen, of which no one felt the weight.

Mr. Livingston replied.

Chancellor Kent said that the select committee did not, when the subject was before them, advert to the bearing which this question might have upon the city of New-York. They adopted it, because they found the same phraseology in the constitution of the United States There were but two grounds of apportionment for representation. 1st. According to property, and, 2dly. According to numbers. And the reason was, that all laws were made to operate upon the one or the other. If it was to refer to electors, it ought to operate uniformly upon all. Freeholds would be the same, whether in the city or the country. But there was an evident inequality when the apportionment was made upon numbers. A class of voters had been introduced that were unknown to the cities, and the argument was greatly increased in its force for extending it to the number of inhabitants, since the extension of the right of suffrage had been made.

Mr. Dodge not having been present at the time of the debate yesterday, did not know but he might make use of arguments which had been then used, but he would take the liberty to suggest a few ideas on the subject.

It did not appear to him that improper prejudices existed against the city of New-York—he did not know that that city or her representation had ever possessed greater influence in the legislature, or the Convention, than her character

entitled her to possess. It was, therefore, unjust at this time to endeavour to oppress them. If that influence had ever existed, it was in consequence of the superior talents of her representation. It was true that that city paid a large share of the taxes in the state, and it was a maxim that taxation and representation should go hand in hand.

He would suggest to the gentleman from Saratoga whether it was not inconsistent, one day to advocate universal suffrage to every citizen throughout the state, and the next day to urge that a part of them should be absolutely disfranchised?

In the city of New-York there would be a great number of persons, possessing property in that city, who would be completely disfranchised. The principle did not apply equally throughout the state. There were the wives of seafaring men, aliens, and minors, notwithstanding the burthens they may bear in the support of government, by paying taxes, who will not be considered at all in the representation of that city. This would be unjust and oppressive; justice was the basis on which we all ought to act. It should be the principle to guide him in voting against the proposition of the gentleman from Saratoga.

We have already obtained one advantage in creating electors; and shall we pursue our victory, and endeavour to take still greater liberties in depriving them of their just representation? The gentleman from Saratoga had argued, that because there were a great many servants and loose characters in the city, they should not be entitled to an equal voice with other parts of the state. Do not bad characters live in all parts of the state to a greater or less extent? It is impossible to make any rule which shall exclude the bad and retain the good. We may deny them the privilege of voting, but we cannot, with justice, deny their being represented.

The motion was further supported by Messrs. Briggs and Cramer, and opposed by Messrs. Buel, Edwards, Tallmadge, and Fairlie, when the question was taken thereon by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Brinkerhoff, Brooks, Buel, Carpenter, Carver, Child, D. Clark, Clyde, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Ferris, Fish, Frost, Hallock, Hogeboom, Hunt, Hunter, Hunting, Huntington, Jay, Jones, Kent, King, Lansing, Lawrence, Lefferts, P. R. Livingston, M'Call, Millikin, Moore, Munro, Paulding, Platt, Porter, President, Price, Radcliff, Reeve, Rhinelander, Rose, Ross, Russell, Sage, Sanders, N. Sanford, Seaman, Sharpe, I. Smith, R. Smith, Spencer, Starkweather, Steele, I. Sutherland, Swift, Sylvester, Tallmadge, Ten Eyck, Townsend, Tripp, Van Fleet, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, E. Williams, Woods, Woodward, Wooster, Yates—82.

AYES—Messrs. Briggs, Burroughs, Case, R. Clarke, Collins, Cramer, Day, Howe, A. Livingston, Nelson, Park, Pumpelly, Richards, Rockwell, Root, Schenck, Seeley, Sheldon, Taylor, Tuttle, Van Horne, N. Williams, Young—23.

Mr. Radcliff then called for the consideration of his motion, which, after some discussion of the subject between the mover and Messrs. Young, Fairlie, and N. Williams, was finally so modified as to read "according to the number of free inhabitants, excluding aliens, persons of colour not taxed, paupers and convicts," and the question being taken thereon, the same was carried, without a division.

Mr. N. Sanford moved to strike out the word "may," and to insert the word "shall," in the eighth line of the third section, to the end that it be imperative on the legislature to make a new apportionment on the return of every census. Carried.

Chief Justice Spencer moved to strike out the word "electors," the propriety of which no longer existed, since the adoption of the motion of the gentleman from New-York, (Mr. Radcliff.) Carried.

The debate on the first and second section was resumed. It was proposed to take the question first on the period for which the senators were to be elected; and, for that purpose, it was moved to strike out four, and insert three years.

The Chairman stated the question (in its reduced form) to be on the motion to make the senatorial term of service three years instead of four—and the number of senators thirty-six instead of thirty-two.

The Chief Justice said, he had heard of no reason, why there should be any alteration in the duration of the period for which the senators were elected. Experience had not shewn, that the period, as now fixed, was too long; and no complaint had been heard from any quarter against it. He supposed, the reasons for continuing the term at four years were rendered stronger by the extension of the right of suffrage, and the lessening of the term of the executive. And when they also took into consideration, that the senate constituted a court of dernier resort, he trusted that the Convention would not deem it advisable to make any innovation in this respect.

Gen. Root replied. He said, he was sorry that he had not been understood by the honourable gentleman from Albany (Mr. Spencer) yesterday: he had then explained the reasons for substituting three, instead of four years. The senators would be responsible to the people: and the principle of permanency in that body would be preserved by changing only one-third annually. It was, also, analogous to the constitution of the United States, as he had then explained it.

Mr. Sheldon called for a division of the question.

Mr. Radcliff observed, that since the extension of the right of suffrage had been decided upon, there was an additional reason to insist upon retaining an extended term of senatorial service: since that body were now more dependant than heretofore on the popular will. He also enforced a variety of other considerations against the motion, and was succeeded by

Mr. Sharpe, who said, that although he was in favour of equalizing the votes of the people; yet there was a point beyond which we ought not to go. The senate should be stable. It was our court of the last resort, and it was an inconsistency to say, that our county court judges, who were but one remove above justices of the peace, should hold their offices for five years as we had already determined, and yet, that the members of our court of dernier resort should be reduced to three.

The motion was further opposed by Messrs. Spencer and King, and supported by the mover and Mr. Cramer.

The question was then taken thereon, by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Buel, Clyde, Collins, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fish, Hallock, Hunter, Huntington, Jay, Jones, Kent, King, Lansing, Lawrence, Lefferts, P. R. Livingston, Millikin, Moore, Munro, Nelson, Paulding, Platt, Porter, President, Radcliff, Reeve, Rhinelander, Sage, Sanders, N. Sanford, Schenck, Sharpe, I. Smith, R. Smith, Spencer, Steele, I. Sutherland, Sylvester, Tallmadge, Ten Eyck, Tripp, Tuttle, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, A. Webster, Wendover, Wheaton, E. Williams, N. Williams, Wooster, Yates.—67.

AYES—Messrs. Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Child, D. Clark, R. Clarke, Cramer, Day, Fenton, Ferris, Frost, Hogeboom, Howe, A. Livingston, M'Call, Park, Price, Pumpelly, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, R. Sandford, Seaman, Seeley, Sheldon, Starkweather, Swift, Taylor, Townley, Townsend, Van Fleet, Van Horne, Woods, Young—40.

Gen. Root thereupon withdrew the residue of his motion; and so much of the first section of the original report as relates to the number and term of service of the senate was put, and carried without a division.

The question, next in order, was upon the second section of the report of the select committee, in relation to the number and designation of the senatorial districts.

Mr. Bacon said, that we had now come to the great point which had been incidentally discussed during the debate on other parts of the report, and which

the committee were now called upon to decide. Believing, as he did, that the division of the state into single senatorial districts was on every account extremely desirable; that it involved no insurmountable difficulties, but was entirely practicable, he should offer an amendment to the report of the select committee to that purpose. It was conceded on all hands that the principle of small and single electoral districts was in itself attended with one very eminent advantage over all other modes, and was confessedly the most friendly to the proper and intelligent exercise of the elective franchise—as it brought the elector and elected near to each other—enabled the former to judge with much greater correctness of the qualifications of the latter, and thus more distinctly carried into effect the true principle of representation, than could possibly be expected where they were situated at a great distance from each other, and might have no real affinity of interests, feelings, or views. Unless therefore, it could be shewn, that there was some particular inconvenience attending small and single districts, which was sufficient to outweigh these their obvious advantages, or that they were impracticable, there could be no doubt that they ought at once to be adopted and established by the constitution. He had heard of but a single inconvenience which had been mentioned, and this was, that in order to constitute them, it might sometimes be necessary to resort to a partial division of large counties, by annexing a few of their surplus towns to an adjoining county, which had a deficiency of the requisite numbers. There would, however, it was believed, be but a very few counties, compared with the whole number, where this would be found necessary—but even were it otherwise, the inconveniences supposed would be very trifling—they existed more in imagination than in fact, and were really of very little practical moment. The amendment which he should propose provided, that such annexation should always consist of contiguous territory, and should infringe as little as possible upon county divisions. How many were the instances where the inhabitants bordering upon a neighbouring county were quite as much conversant with their neighbours living in a different one, as much connected with them in business, and as well acquainted with their public concerns and characters, as they were with the business, habits, and characters of their own county? In many cases they were more so; and if they were not so already, the habit of convening, consulting, and voting with them, would very soon bring them thus acquainted. A greater part of county lines were merely ideal and arbitrary landmarks, often very capriciously laid down, and for objects very different from those which were necessary to take into consideration in establishing convenient election districts. At any rate, it might be safely said, that the contiguous inhabitants of counties were much better acquainted with each other, and had greater community of interests and feelings, than the great body of people residing in the distant parts of the larger districts which it was proposed to constitute; when it was necessary to bring together from two to four counties to make but seventeen districts, and many more, if, as some contended, we ought to have either eight or twelve districts. In this case, it will be indispensable to connect together inhabitants residing sometimes hundreds of miles from each other, as had been done heretofore, the inconvenience and absurdity of which was on all hands felt and acknowledged. Another advantage of single districts was, that they would be more likely to be fairly laid off, and did not offer that facility or temptation to be abused for the purposes of party policy, or to use a word which had become a sort of technical, and was a very expressive one, they were not so capable of being *gerrymandered* as large districts were. In the latter case, a prevailing party in the state if already large, could frequently, by a skilful arrangement, and a dexterous transposition of the counties, so lay off a few great districts as to secure to themselves every senator to be elected, and completely to exclude from that body every one of their political opponents. On every account, such a state of things was dangerous and undesirable. To the minority it must be galling and unwelcome, and however desirable it might seem to a majority, and however apt they were to take measures for that end, it was, as he in his conscience believed, and as had often turned out to be the case, equally impolitic and dangerous, even for them. A minority to some extent, was not only desirable for the general interest of the public, but

even for the well being and long continuance of the majority itself. It was necessary to keep them in healthful action, and to prevent them from falling to pieces by their own weight. Under the predominance of what political party the proposed constitution was, in all probability, to be carried into effect, it was not, perhaps, difficult to foresee, under any arrangement of our electoral districts whatever; but he submitted it to the good sense of gentlemen, whether it was advisable to leave this power of districting the state open to the abuse of any party whatever, when it was not called for by any considerations of necessity or utility. Without entering more at large into the question at present, he would submit the amendment to the discretion of the committee, which was to strike out the word "seventeen" in the first line, and to insert "thirty-two," and after the word "districts," in the fourth line, insert the following:

"That each district shall elect one senator, and shall be composed of contiguous territory, shall conform as near as may be to county lines, and be laid off, and the senators apportioned by the present legislsture at their next session according to the number of free inhabitants, and excluding aliens, persons of colour not taxed, paupers and convicts, in each district; which apportionment shall continue until a census of the inhabitants of the state shall be taken as hereinafter directed."

Col. Young remarked, that he was in favour of the greatest number of senatorial districts that could be formed without breaking up counties; but he was convinced that it was inexpedient to dissolve and disunite those associations. It had been said yesterday, by two honourable gentlemen, that the towns in Dutchess were anxious for a divorce from Columbia, whilst an honourable gentleman from the latter county (Mr. Van Ness) had replied that the wish was reciprocated. This convinced him that it was expedient to preserve the counties entire.

Mr. E. Williams said, there had been a general expression in favour of having single districts, if that object could be effected without disturbing the lines of counties. The honourable Chairman had been expressing himself in favour of such an arrangement, if the plan could be devised for doing so, without dividing and cutting up counties, or making them too unequal. But he has told us that this cannot be done; and another gentleman had assured them, that a division of the state into thirty-two districts, would require the cutting up of thirty counties. Mr. W. said he had carefully examined this subject, and had made what he believed to be an accurate calculation; and he had found that single districts, with the exception of the city of New-York, might be made by dividing only three counties. By the calculation he had made, there would be one senator for every 45,335 souls, excluding those which it had been determined by a previous vote, were not to be counted.

Suffolk and Queens together, he said, contained about the requisite number for one senator; and he would make them one district. He would unite the city of New-York and the counties of Kings and Richmond, into one district, and give them three senators: there was such a close and constant intercourse between these places, that the inhabitants were very generally acquainted with each other. Westchester and Putnam one; Rockland and Orange one. Here, he said, would be a surplus of 10,000; and if that was thought too great, they might annex a few towns of Orange, to Ulster and Sullivan, as they would fall about 3000 short of the number required for one member. Dutchess more than enough for one. Columbia a little short. Greene and Delaware one; Otsego one; Albany one; Schoharie and Schenectady one; Saratoga one; Montgomery one; Warren, Clinton and Franklin one; Rensselaer one; Washington one: St. Lawrence and Jefferson one; Lewis and Herkimer one; Oneida would have a large surplus, but it was better to let large counties have but one, though they might have an excess; their representation in the other house, would make up for the deficiency in the senate. Or, if thought best, a few of the towns of Oneida, might be added to Herkimer. Madison and Oswego one; Onondaga one; Chenango and Broome one; Cortland and Tioga one; Cayuga one; Seneca and Tompkins one; Steuben, Allegany, and Cattaragus one; Ontario one; here, too, there would be a large surplus; and a few towns might be taken from this county and added to an adjoining district. Livingston and Monroe one; Genesee one; and Niagara, Erie, and Chautauque one.

The districts, he admitted, would not be exactly equal; but the difference between any two, would not be greater than would be the case, by adopting the report of the committee. And he would beg leave to call the attention of the honourable Chairman of the select committee, (Mr. King) to this subject; he could, he well knew, enforce more strongly and clearly than himself, the necessity of having small districts, that the electors and the elected might know each other; that the electors might know the moral and religious character of those for whom they voted.

The following is the table and estimates submitted by Mr. Williams.

Single districts, contrasted with the seventeen districts, as reported by the select Committee.

Free white inhabitants in this state,	1,332,744
Deduct aliens,	15,101
	1,317,643

Divided by thirty-two, the whole number of senators, gives 41,176 to each.

The population of each county, as hereinafter expressed, is the entire number of free whites, excepting only foreigners not naturalized.

DOUBLE DISTRICTS,

Proposed by the Select Committee, (of which Mr. King was Chairman) in their report.

1st. *district*, Suffolk, 22,429, Queens, 18,260, Kings, 9,118, Westchester, 30, 525 — 80,332
Two senators require 82,352; minus 2,020

2d. *district*, New-York, 107,430, Richmond, 5520 — 112,950
Three senators require 123,528; minus 10,578

3rd. *district*, Rockland, 8,246, Orange, 38,944, Ulster, 28,709, Sullivan, 8,729, — 84,628
Two senators require 82,352; plus 2,276

4th. *district*, Putnam, 11,014, Dutchess, 43,910, Columbia, 36, 383, — 91,307,
Two senators require 82,352; plus 8,955.

5th. *district*, Greene, 22,144, Delaware, 25,891, Otsego, 44,284, — 92,319
Two senators require 82,352; plus 9,967

6th. *district*, Albany, 36,524, Schenectady, 12,126 Schoharie, 22.523, — 71,173
Two senators require 82,352; minus 11,179

7th. *district*, Saratoga, 35.167, Montgomery, 36, 558, Hamilton, 1,243, Warren, 9,327, — 82,295
Two senators require 82,352: minus 57

8th. *district*, Rensselaer, 38,841, Washington, 38, 194 — 77,038
Two senators require 82,352; minus 4,138

9th. *district*, Essex, 12.591, Clinton, 11,911, Franklin, 4,244, St. Lawrence, 15,025, — 43,771 plus 2,595

10th. *district*, Lewis, 9,060, Jefferson, 32,025, 41 085; minus 91

11th. *district*, Herkimer, 30,432, Oneida, 49, 675 — 80,107
Two senators require 82,352: minus 2,245

12th. *district*, Madison, 31,949, Onondaga, 41,114 Oswego, 12,211 — 85,274
Two senators require 82,352; plus 2,922

13th. *district*, Chenango, 31,007, Cortland 16, 435, Broome, 14,204, Tioga, 16,731 — 78,377
Two senators require 82.352; minus 3,971

14th. *district*, Cayuga, 38,447, Seneca, 23,348 Tompkins 20,589 — 82,354
Two senators require 32,252; plus 2

15th. *district*, Ontario, 60,951, Steuben, 21.658 Allegany, 9,271 — 91,880
Two senators require 82.352; plus 9,528

16th. *district*, Munro, 26,695, Livingston, 18.355 Genesee, 39,998 — 85,048
Two senators require 82,352; plus 2.695

17th *district*. Niagara, and Erie, 22,843, Cattaragus, 4,084 Chautauque, 12,553 — 39,480, minus 1,696

SINGLE DISTRICTS,

Proposed by Mr. Williams, and contrasted with the above.

1st. *district*, Suffolk 22,429, Queens 18,260—40, 689; minus 1,587.

2d. *district*, Kings 9,118, New-York 107,430. Richmond 5,520 — 122,068
Three senators require 123,528: minus 1,460

3d. *district*, Westchester 30,525, Putnam 11,014 —41.539, plus 363; or,
Westchester 30,525, Rockland 8,246—38,871; minus 2,405.

4th. *district* Orange alone 38,943; minus 2,232; or,
Orange 38,944, Rockland 8,246—47,190; plus 6,914.

5th. *district*, Ulster 28,709, Sullivan 8,729—37,438; minus 3,738.

6th. *district*, Dutchess alone 43,910; plus 1,734.

7th. *district*, Columbia alone 36 383; minus 4,798.

8th *district*, Greene 22,144, Delaware 25,891; plus 6,859.

9th. *district*, Otsego 44,284; plus 3,108.

10th. *district*, Albany 36,524; minus 4,652.

11th. *district*, Schenectady 12,126, Schoharie 22,523; minus 6,527.

12th. *district*, Saratoga alone 35,167; minus 6,006; or,
Saratoga 35,167, Warren 9,327; plus 3.318.

13th. *district*, Montgomery 36,558, Hamilton 1,243—37,801; minus 3,375.

14th. *district*, Rensselaer alone 38,844; minus 2,332.

15th. *district*, Washington alone 38,198; minus 2,982.

16th. *district*, the same as ninth.

17th. *district*, the same as tenth.

18th *district*, Herkimer, 30,432; minus 10,744.

19th *district*, Oneida, alone 49,675; plus 7,499.

20th. *district*, Madison, 31,919, Oswego, 12,211; plus 2,984

21st. *district*, Onondaga, 41,114; minus 62

22d. *district*, Chenango, 31,007; Cortland 16, 435; plos 5,276; or
Chenango, 31,007. Broome, 14,204; plus 4,035

23rd *district*, Broome, 14,204, Tioga, 16,732, 31,935: minus 9,241; or
Tioga, 16,731, Cortland, 16,435, — 33,166 minus 8,010

24th. *district*. Cayuga, 38,447 minus 2,729

25th. *district*. Seneca, 23,318, Tompkins, 20, 589—43,907; plus 1,731.

26th. *district*, Ontario, 60,951: plus 18,775.

27th. *district*, Steuben 21,658, Allegany 9,271, Cattaraugus 4084—35,213; minus 6163.

28th *district*, Monroe 26,695, Livingston, 18, 355—46,050; plus 3,847.

29th. *district*, Genesee 39,998: minus 1178.

30th *district*, Niagara and Erie 22,843, Chautauque 12,553—35,396; minus 5780.

The usual hour of adjournment having arrived, the committee rose, reported progress, and obtained leave to sit again.

In Convention, Mr. Spencer asked leave of absence for a fortnight for himself and Messrs. Van Ness and Platt, which was granted, *nem con*, and the Convention adjourned.

SATURDAY, OCTOBER 13, 1821.

Prayer by the Rev. Mr. De Witt. The minutes of yesterday read and approved.

Mr. P. R. Livingston, after some remarks on questions of order, and the unnecesary waste of time, which had already taken place, offered the following resolution:

Resolved, by this Convention, that no member be permitted to speak more than twice, on the same question, when in committee of the whole.

The resolution was opposed by Mr. Young. Adopted.

Mr. Radcliff, from the committee on the parts of the constitution, not referred to any particular committee, reported in part as follows:

I. That the proceeds of all the lands belonging to this state, not otherwise appropriated, which shall hereafter be sold or disposed of, under the authority of the legislature, together with the fund, denominated the common school fund, shall constitute and remain a perpetual fund, the interest of which, shall be inviolably appropriated and applied to the support of common schools, throughout this state.

II. That no lottery shall hereafter be authorised in this state: and the legislature shall pass laws, to prevent the sale of all lottery tickets, within this state, except in lotteries already provided for by them.

III. That the thirtieth article of the constitution of this state, ought to be abolished.*

IV. That the fortieth article of the constitution, ought also to be abolished; and that instead thereof, the following be adopted.

"The militia of this state, shall, at all times hereafter, be armed and disciplined, and in readiness for service; but that all persons belonging to any sect or denomination, holding it unlawful to bear arms, be excused therefrom, and to pay to the state, such sums of money, in lieu of their personal service, as the same shall be worth."

V. That the legislature shall not pass any laws, by which any person shall be compelled to attend upon, or support any place of public worship; or to maintain any ministry against his consent; or which shall, in any manner, restrain the free exercise of religious profession or worship.

VI. That no new county shall be erected or established, which shall reduce the county or counties, from which it may be taken, or either of them, to less than the contents of square miles; nor shall any new county be established of less contents.

VII. The committee have considered the resolution of the honourable the convention, of the 10th instant, by which it was referred to them to report what provision, if any, is proper to be adopted, in relation to the appointment of senators of this state, in the senate of the United States, and are of opinion, that the mode of appointing the said senators, is prescribed by the constitution of the United States, and depends on the just construction thereof: That the constitution of the United States, and the true construction of its provisions in relation thereto, must control this question, and that therefore it would be useless and unavailing, to make any provision on the subject.

On motion of Mr. Van Buren, the report was referred to the committee of the whole, when on the legislative department, and ordered to be printed.

* Mode of appointment of delegates to the general congress.

THE LEGISLATIVE DEPARTMENT.

The Convention then resolved itself into a Committee of the whole on the unfinished business of yesterday, (the legislative department.) Mr. Van Buren in the chair.

The Chairman stated the question before the committee to be on the proposition of Mr. Bacon, for dividing the state into thirty-two senate districts.

Mr. King presented the following statement, shewing the result of dividing the state into thirty-two senatorial districts, of equal numbers and contiguous territory:—

1st district, Suffolk 22,429, Queens, 18,260 — 40,689

2d district, Kings 9118, Richmond 5520, part of New-York 26,438 — 41,176

3d district, Part of New-York — 41,176

4th district, Part of New-York — 39,816

5th district, Westchester 30,525, Putnam 11,014 — 41,539

6th district, Part of Dutchess — 41,176

7th district, Part of Dutchess 2734, Columbia 36,383, part of Rensselaer 2059 — 41,176

8th district, Part of Rensselaer 36,825, part of Washington 4351 — 41,176

9th district, Part of Washington 33,843, part of Warren 7127 — 41,170

10th district, Warren 2000, Essex 12,591, Clinton 11,011, Franklin 4244, Hamilton 1243, part of Saratoga 10,100 — 41,189

11th district, Part of Saratoga 25,067, part of Montgomery 16,109 — 41,176

12th district, Part of Montgomery 20.436, part of Schoharie 20,637 — 41,176

13th district, Schoharie 1886, Schenectady, 12,126, part of Albany 27,164 — 41,176

14th district, Albany, 9,360, Greene, 22,144, part of Ulster, 9,672 — 41,176

15th district, Ulster, 19,037, Orange, 6,014, Sullivan, 8,559, Delaware, 7,556 — 41,176

16th district, Rockland, 8,246, Orange, 32,930 — 41,176

17th district, Delaware, 17,325, Otsego, 23.851 — 41,176

18th district, Otsego, 20,433, Chenango, 20,743 — 41,176

19th district, Chenango, 10,264 Broome, 14,204, Cortland, 16,435 — 40,903

20th district, Herkimer, 30,432, Oneida, 10,744 — 41,176

21st district, Oneida, 24,810, Madison, 16,366 — 41,176

22d district, St. Lawrence, 15,025, Jefferson, 26,151 — 41,176

23d district, Jefferson, 5,884, Lewis, 9,060, Oswego, 12,211. Oneida, 14,021 — 41,176

24th district, Madison, 15,503, Onondaga, 25,583, — 41,176

25th district, Onondaga, 15,531, Cayuga, 25,645 — 41,176

26th district, Cayuga, 12,802, Seneca, 23,318, Tompkins, 5,056 — 41,176

27th district, Tompkins, 15,533, Tioga, 16,776, Steuben, 8,867 — 41,176

28th district, Steuben, 12,791, Allegany, 9,271, Livingston, 18,400 — 40,462

29th district, Ontario, — 41,176

30th district, Ontario, 19,924, Monroe, 21,256 — 41,176

31st district, Monroe, 5,504, Genesee, 35,672 — 41,175

32d district, Genesee, 4,428, Niagara, and Erie, 22,843, Chautauque, 12,555, Cattaragus, 4,084 — 43,810

Mr. Tompkins was opposed to incorporating any specific regulation in the constitution on this subject. He would fix the general principle, and leave the rest to the legislature. His plan was to insert in the constitution a clause making a provision, that there should not be less than eight districts, nor more than thirty-two senators, leaving the number of districts and the apportionment to the legislature.

Mr. King objected both to the proposition of Mr. Bacon and of Mr. Tompkins. The former would be attended with many difficulties, and the latter appeared impracticable, since the constitution must go into operation before the legislature under it could be elected He thought, also, that it would lead to party contests in the legislature. On the whole, he believed the report of the committee liable to as few objections as any plan that had been submitted.

Mr. Tompkins disclaimed being influenced by party views, or by any wish to treat the committee with disrespect.

Gen. Tallmadge proposed to postpone the subject. He wished to submit a proposition, after the amendment of the gentleman from Columbia, [see proceedings of yesterday,] was laid on the table.

Mr. Van Vechten offered the following amendment :---

" That the state shall be divided into thirty-two senatorial districts, to be composed of contiguous territory, and that one senator shall be elected in each district; Provided that it shall be competent for the legislature, in case it shall be deemed expedient to form the city and county of New-York, and the counties of Kings and Richmond, into one district, for the purpose of electing two senators, to reduce the number of said districts to thirty-one, and to authorise the election of two senators in the said district, to be composed of the city and county of New-York, and the counties of Kings and Richmond."

Mr. E. Williams made a few remarks in reply to the objections offered by the gentleman from Queens.

The question on Mr. Tallmadge's motion for postponing the 2d section of the report with the amendments of Messrs. Williams, Bacon, and Van Vecten till Monday, was taken and carried.

Mr. Tompkins wished the committee might rise and report, for the purpose of directing the amendments to be printed.

Before the motion was put,

Gen. Tallmadge offered the following resolutions.

Resolved, That the state shall be divided into eight districts, to be denominated senate districts—and that the thirty-two senators be elected in the said districts, in equal proportions, that the said districts be contiguous in territory; and as nearly as may be equal in population, excluding aliens, persons of colour not taxed, paupers, and convicts.

Resolved, That it be referred to a select committee, to report a division of the state into eight senatorial districts, upon the principles contained in the preceding resolution, and that they report to the Convention.

Mr. Tompkins offered the following amendment.

That the state shall be divided into as many districts as the legislature shall direct, not less than eight, and that thirty-two senators shall be elected in said districts.

The committee then rose and reported

On motion of M. Sharpe, ordered that the several propositions be printed.

The Convention then re-resolved itself into a committee of the whole on the unfinished business of yesterday—Mr. Van Buren in the chair.

The third section was read, and postponed till Monday.

The fourth section was then read.

Mr. Wheaton stated that though he had not the honour to be a member of the select committee who reported this clause, yet he understood that it was intended to determine a doubt which had sometimes arisen, whether a money bill could originate or be amended in the senate. By the ninth article of the constitution of 1777, the house of assembly was to enjoy the same privileges, and proceed in doing business in the same manner as the assemblies of the colony of New-York had formerly done. Under the colonial government, the council was appointed by the crown, and as the colonial legislature was constructed on the model of parliament, no money bill could originate or be amended except in the assembly, the members of which were the immediate representatives of the people. By the constitution of parliament, as it had stood ever since the knights and burgesses began to sit in a separate house, the commons had uniformly asserted their exclusive right to originate money bills, and had uniformly resisted the right of the lords even to amend them. But as our legislature was constituted, there was no reason why any doubt should be entertained whether the senate could originate or amend such bills. Both houses were the immediate representatives of the people, and both might be considered as equally representing the taxable property of the country. The analogy of the United States' constitution did not apply, because in that government representatives and direct taxes were to be apportioned among the several states

by the same rule. It was therefore fit that the house of representatives in congress should have the exclusive right of originating revenue bills.

Col. Young replied, when the question was taken on the section, and carried without amendment.

The fifth section was then read.

Col. Young moved that it be postponed, as he wished to offer an amendment making the pay of members two dollars per day.

Mr. E. Williams hoped the section would not be postponed—the gentleman from Saratoga could write two dollars in a moment.

Mr. King said that no sum, could with propriety, be fixed in the constitution; the sum proper to be paid would depend upon the state of the times. Two dollars at one time, would be a better compensation than four at another. It was best to leave that subject with the legislature, under the restriction that no legislature should regulate its own pay. Public opinion would then always regulate the sum, and it would be such as would be reasonable.

Mr. Hallock called for the consideration of a substitute for this section, which he had offered some time since, and which had been committed to the committee of the whole when on this subject—the object of which, was to provide that the pay should not, for the present, exceed a certain sum, which could not be altered until after a certain number of years, the sum and number of years left in blank. The sum of two dollars, two and a half, and three dollars, were mentioned, as sums with which it would be proposed to fill the first blank; and five years was also mentioned as a proper period with which to fill the second blank.

Mr. Sharpe was in favour of the section as reported by the select committee. He hoped they would not, in making a constitution, attempt to run a race of popularity. With the restriction provided by the report itself, the legislature might safely be entrusted with the regulation of their compensation. He had, he said, seen two dollar men, three dollar men, and from that up to five and six dollars. The courting of popularity in this way, he had always considered as disreputable, and generally, he believed, it had proved unavailing. He had known one remarkable instance of this kind: two members from the county of Saratoga, two years ago, had been the strenuous advocates for lessening the pay of the members of the legislature, in which, however, they had failed. They received their pay from the public treasury, but on arriving home had deposited in the county treasury of their county, about one hundred dollars each, being what they supposed the excess, or what was more than a reasonable compensation: both the gentlemen were candidates for a re-election, but the electors of Saratoga thought proper to leave them at home, notwithstanding the deposit of their hundred dollars each for the benefit of the county.

Mr. Duer hoped the gentleman from New-York would not impute to himself and his honourable colleague, a desire of securing popularity; if he did, such imputation would be unjust and unfounded. He thought they had sufficiently shown that they were not actuated by such motives, and he hoped the proposition of his honourable colleague would be adopted. The great evil, of which the people had complained, was, that the members had been allowed to fix their own pay; and that motives of self-interest had prevailed over their popularity, insomuch that they had generally fixed their wages higher than the people thought proper; and notwithstanding, each successive legislature has pursued the very course which public opinion has condemned and reprobated.

What is to be the remedy? To take it out of the power of the legislature to be led by their own private interest, to pursue a course different from the wishes of the people. It was supposed by some, that the report of the select committee contained a provision which would answer every purpose; for his own part, he could not concur in that opinion. The members of the legislature would generally expect a re-election; and although they would not have the power of fixing it for their present compensation, they would fix it in expectation of receiving the benefit in future. He was satisfied it would not be wise to fix the price for a long term, but there could be no danger in fixing it for five years, and for these reasons he thought the substitute ought to be adopted.

Col. Young said he would be opposed to regulating the pay of the members of the legislature for any long term of years. Let one year intervene between

the legislature making the provision for the pay, and that to which such provision should apply. He thought it necessary that some regulation should be made in the constitution, for the compensation to be received for the two first years. This would be necessary, to quiet the public discontent which had grown out of the large compensation which the legislature had heretofore voted for themselves. It was customary for the supervisors of counties to receive two dollars per day for their services ; he did not know why that ought not to be considered as a criterion by which to regulate the pay of members of the legislature. It was true that the latter were put to more expense and had to pay more for their board, than the former, but the length of time for which they were employed, would be an equivalent for that difference ; perhaps it might be well enough to fix the sum at two dollars and fifty cents per day.

The honourable gentleman from New-York (Mr. Sharpe) had alluded to a circumstance which had occurred two years ago in Saratoga county. He had attributed the loss of the election of two gentlemen in that county, to the circumstance of their having paid into the treasury of their county, a part of the compensation they had received as members of the legislature. Mr. Y. did not think this a fair conclusion. He thought it would have been more charitable for the gentleman to have attributed their defeat to some other cause. I have, sir, continued Mr. Y. known candidates to lose their election, who had not parted with any portion of the pay they had received in the legislature.

Gen. Root said, when the proposition of the gentleman from Orange, should be negatived, (which he believed would be soon) he should offer an amendment, that no legislature should increase their pay during the year for which they were elected. It might not be improper for the next legislature, to instruct the attorney general to collect the money that was received unlawfully at the last session.

A gentleman at Catskill, had three or four years ago, offered to serve the state as a legislator, for six shillings per day ; or, if they would board him, for four shillings per day ; but they must make an advance sufficient to enable him to purchase a suit of clothes. The gentleman from Orange has it. He denies that he votes for the sake of popularity. I will admit that I vote for popularity. I vote to please the great mass of the people in the state, including my constituents, the yeomanry, and mechanics ; (and I might say some merchants too) but more particularly, agriculturists, and when I vote to please all these classes, I vote to please myself also. Members that are calculating on a re-election, will generally be cautious how they vote for higher wages, on account of their popularity ; and those who do not expect a re-election, will not feel so much magnanimity, as to vote for paying others more than they receive themselves.

Mr. J. Sutherland said that much discontent had certainly existed respecting the compensation which the members of the legislature had hitherto received. He believed that it would not be amiss to fix the pay for a few years. The fluctuation in that period could not be so great as to make any serious difference ; the compensation had been unreasonably high. No more should be given, than a sum which would compensate men in the common walks of life for their time, and he supposed two and a half dollars per day, as the times now were, would be sufficient.

Mr. R. Clarke was opposed to fixing any sum by the constitution, and he was so, he believed, from a just regard to the public interest. He would not, he said, have the pay so large as to be an object of cupidity, or so low as to prevent men in the middling paths of life from attending without great sacrifice of private interest. Fixing the compensation at a very low sum, would operate to fill the legislative assemblies with two opposite classes of men—nabobs and those having no honest employment to keep them at home. It would drive from the legislature all the honest yeomanry of the country, who could not afford to bestow their time without a reasonable compensation.

Gen. Tallmadge proposed to fix the pay of members for a certain period, before the expiration of which it should not be altered. He thought two years would be a proper term for an experiment, during which no great changes in the relative prices of labour and money could take place.

Mr. Nelson moved an amendment limiting the pay regulation of the members to two years, and until after the meeting of the next succeeding legislature.

Gen. Root called up the resolution which he had offered at an early part of the session, and which had been permitted to lie on the table. He replied at considerable length to the gentlemen who had preceded him in the debate.

Mr. Duer regretted that the prejudices of an early education prevented his replying to the language of a gentleman in a public assembly, which *he* should be ashamed to use in a private circle. The epithet of "sober-minded," which he had unfortunately used a few days ago, had given great offence to the gentleman from Delaware, and had drawn down his indignation upon him. The gentleman tells us (but the avowal was unnecessary) that he is directed by popularity in voting—that his conduct in this house is controlled by a desire to secure popularity. I deny that to be the case with me. I will endeavour to be directed by what I conceive to be for the interests of my constituents, without regard to their prejudices; although by such a course I may deprive myself of that popularity which is the idol of the gentleman from Delaware. I flatter myself I shall preserve their permanent esteem, which to me is much more desirable. The gentleman has requested us to take a course, which, I think, were we to pursue it, would be an honest one—nay, more so than to endeavour to destroy the popularity of those who have voted on similar grounds, and then pocket $1,500 himself. Should we take this course, it will be full as honest and as disinterested as to exclaim against those who have fixed a rate of compensation, and then without scruple receive pay to the full amount, after being absent during half the session.

I trust the proposition which has been submitted by my honourable colleague will not be so speedily rejected as the gentleman from Delaware may imagine; although I have no doubt he wishes it to be the case, as it may interfere with a favourite proposition of his own, and he is always anxious to appear to the people as being the author of all popular propositions.

Mr. D. said he was very thankful to the gentleman from Saratoga for the support which he had given. He was in favour of filling the blank with the smallest sum mentioned, or a sum barely sufficient to pay the expenses; and by adopting such a course the character of members would be improved. The place would not be sought after for the emolument which it would afford.

Gen. Root explained at length in relation to the subject referred to by Mr. Duer.

Mr. Duer expressed his entire satisfaction with the explanation that had been given, and hoped hereafter that the gentleman from Delaware would be inclined to extend the same charity to others that he claimed for himself.

The amendment offered by the gentleman from Rensselaer, (Mr. Hogeboom) and referred to the committee of the whole when on this subject, was read by the chairman.

Mr. Cramer hoped the compensation of members would be fixed by the constitution.

Mr. Dodge wished that a maximum might be etablished, and offered an amendment to that effect.

Mr. Briggs hoped we should not disfigure the constitution by fixing on the face of it dollars, shillings, cents, farthings, and mills. It was descending from great and fundamental principles.

Mr. Russell was opposed to the amendment. It was going too much into detail, and had better be left to the legislature.

Mr. Sharpe announced his intention to vote against the amendment.

Mr. Bacon said, that he was, upon the whole, in favour of fixing in the constitution the pay of members of the legislature, at a sum which should be unalterable for a short period. It was true, that there might be some little inequality in different years in the real value of the sum which was fixed, owing to a variation in the price of commodities for that period; but, as but a short period was proposed, it could produce no material inconvenience or injustice, and would be more than counterbalanced by the benefits which would grow out of it. And those were that it would put at rest, for a while at least, that ball of

popularity which was ever bandying about between the rival parties of the state, on the subject of salaries and compensations. The controversy generally, was, who should play this ball the most successfully. The gentleman from New-York, could probably have no adequate idea of the degrading and afflictive scenes to which it often led in the country; that it was made the hobby-horse of ambitious demagogues, and peddling politicians, and in the contest about it, the great questions which affected the vital interests of the state were too often absorbed or overlooked. It was mortifying and degrading, to witness how a little question of this character was too often managed; one party gave out their notice for a county meeting, to nominate their members of assembly, and by the way of securing their popularity, took care to put in something about the wages of members; the other party equally cunning, and about equally sincere, when they came to give their notice, were sure to bait their trap with the same catching topic. The members nominated by each, must always be understood to be pledged to lower the wages, and this was most generally the last of it, until another year, when the same game was played over again. He wished to see this small political trading broken up, even at the expense of preventing the legislature for a short period, from reducing the compensations, at least, of their immediate successors; for even this had been within our own short recollection, improved as a net with which to catch a little popularity, and to all appearances, succeeded admirably. We had all seen the indecent and barefaced spectacle, of a legislature taking four dollars a day to themselves, at the same time reducing their immediate successors to three, and then returning home with the boast, that they had proved themselves the friends of the people and of low wages, and as it would seem, gaining to themselves an increased fund of popularity, by that very act. They answered, in general, when enquired of by their constituents that they had reduced the wages, as the journals had not yet arrived to show how the fact was. Indeed, on these sort of questions, the journals generally tell no individual tales, for upon searching them, it will be found, that no one often cares to call for the ayes and noes. Those who choose to vote for a little additional compensation are very welcome to do it, and the rest are sure to make no noise about it. In order to prevent in some measure, the successful practice of acts like these, he was for fixing the compensation by the constitution, for a short period—alterable only periodically, as contemplated by the amendment proposed.

Mr. King again urged several considerations in favour of leaving the subject to the legislature. If the pay of the members was fixed for two, three, four, or five years, what then? Should we call another Convention to amend the constitution? We must after all leave it to the legislature.

The question of Mr. Duer's amendment was then taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Beckwith, Birdseye, Bowman, Breese, Briggs, Brinkerhoff, Brooks, Burroughs, Carver, D. Clark, R. Clarke, Dodge, Dubois, Eastwood, Fairlie, Fenton, Fish, Frost, Humphrey, Hunt, Hunter, Huntington, Jay, Jones, Kent, King, Lansing, Lefferts, A. Livingston, M'Call, Millikin, Munro, Nelson, Park, Paulding, President, Price, Radcliff, Rhinelander, Root, Rose, Rosebrugh, Russell, Sage, R. Sandford, Sharpe, I. Smith, Starkweather, Swift, Sylvester, Ten Eyck, Tripp, Van Fleet, S. Van Rensselaer, Van Vechten, Ward, A. Webster, E. Webster, Wendover, Wheaton, E. Williams, Woods—63.

AYES—Messrs. Bacon, Baker, Barlow, Carpenter, Case, Child, Clyde, Collins, Cramer, Day, Duer, Dyckman, Ferris, Hallock, Howe, P. R. Livingston, Moore, Pumpelly, Reeve, Richards, Rockwell, Sanders, N. Sanford, Seaman, Seely, Sheldon, R. Smith, Steele, I. Sutherland, Tallmadge, Taylor, Townley, Townend, Van Horne, J. R. Van Rensselaer, Verbryck, Woodward, Wooster—39.

The question next was on the amendment offered by Mr. Nelson.

Gen. Tallmadge proposed a slight alteration in the amendment, to which Mr. Nelson assented.

Gen. Root was opposed to the proposition, on the ground that the legislative years was not defined, and difficulty might arise in ascertaining the limitation of the provision.

The question on Mr. Nelson's amendment was then taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Birdseye, Bowman, Breese, Brinkerhoff, Brooks, Buel, Burroughs, R. Clarke, Day, Dodge, Fairlie, Fenton, Ferris, Fish, Frost, Hunt, Hunting, Jay, Kent, King, Lefferts, M'Call, Millikin, Park, Paulding, President, Price, Radcliff, Reeve, Rhinelander, Root, Rose, Rosebrugh, Russell, Sage, R. Sandford, Seely, I. Smith, Swift, Ten Eyck, Tripp, Van Fleet, Van Horne, S. Van Rensselaer, Van Vechten, A. Webster, E. Webster, Wendover, Wheaton, E. Williams, Wooster.—51.

AYES—Messrs. Bacon, Baker, Barlow, Beckwith, Briggs, Carpenter, Carver, Case, Child, D. Clark, Clyde, Collins, Cramer, Dubois, Dyckman, Eastwood, Hallock, Hees, Howe, Hunter, Huntington, Jones, Lansing, A. Livingston, P. R. Livingston, Moore, Munro, Nelson, Pumpelly, Richards, Rockwell, Sanders, N. Sanford, Seaman, Sharpe, Starkweather, I. Sutherland, Sylvester, Tallmadge, Taylor, Townley, Townsend, J. R. Van Rensselaer, Verbryck, Woods, Woodward, Young—47.

The question on the amendment offered by Mr. Dodge was then taken, and decided in the negative.

After a few remarks from Messrs. Root, King, and Burroughs, the 5th section was passed.

The 6th section was then read.

Mr. Birdseye then moved the following amendment:

"No member of the legislature shall receive any civil appointment from the governor and senate, or from the legislature during the term for which he shall have been elected."

Mr. King assented to the substitute of Mr. Birdseye.

Mr. E. Williams considered this a very salutary provision, and he hoped it would be adopted. It did not apply to the great mass of officers, as had been stated by the gentleman from Delaware; from the first office in the gift of the state down to a path master. It referred to those only who were to be appointed by the governor and senate. These were few in number, and the offices were desirable both for the honours which they confer, and the emoluments which are attached to them. The judiciary officers, the attorney general, the comptroller, the secretary of state, canal commissioners, &c. are the great, honourable and valuable offices, to which, we may well suppose, the members of the legislature, without degrading their dignity, might aspire. Experience has sufficiently shown that they have done so; and on an examination of the subject, it will be found, that nineteen out of twenty of these offices have been filled out of the legislature from year to year. It has been continued till the people have expressed their disapprobation, from one part of the state to the other; and although they have selected in many instances fit and suitable candidates for office, yet inasmuch as they were taken from the legislature, the body who superintend and manage the appointing power, they have been considered as improper selections. An idea is entertained that the legislature has been rendered subservient to the appointing power, for the promotion of political views and the advancement of individuals in that body. This has been witnessed with horror! And is it wise, or is it prudent, to let members of the legislature be promoted to fill these important offices? It may be said, the case will be different now, from what it was when the appointing power was in the hands of the old council; but where is there an objection that would lie against the principle then, that will not apply with equal force now? Then you had only to contract with the governor and four individuals—now you have the governor and thirty-two senators. If appointments have been obtained by trading and bargaining—by conferring legislative benefits for political appointments—is it not probable that something of the kind will continue to be practised? There are, to be sure, thirty-two senators, a majority of whom would be seventeen, to be consulted; but let a man come, like the honourable gentleman from Delaware, with his powerful eloquence pouring like a mountain torrent upon that body, and who could withstand it? If, then, it be true, that

this has been the practice between the legislature and the appointing power, is it not dangerous in effect, and ought we not in our wisdom to provide by a constitutional provision, that this iniquity be no longer practised, to the disgrace of our legislature? Let it not be hereafter said that the governor and council were obliged to select an attorney general from the floor of the legislature. Let it not be said that because he was a prominent member of that body, he was selected from among his compeers as an individual who ought to receive that office. Let it not be said that a secretary of state was taken from a particular county or section of the state, not because he was worthy of the office, but because a political party to which he was attached must be propitiated. There was much good sense in what the gentleman from Delaware had stated with respect to the seventh and eighth sections. Experience had shown that men would barter for office, without regard to the public interest. The provision in the constitution of the United States has proved sufficient to prevent this bargaining for offices. You have seen men sent from an individual state, urging propositions approved by their own consciences, and sanctioned by the principles of religion and humanity—you have seen them advocating these doctrines, and declaring that their consciences would not allow them to depart from them, because they were clothed with directions from the legislature, conferring on them the instructions of their constituents. They have gone on till near the expiration of their time, when their consciences have suddenly relaxed, and their moral sense has undergone a change; when their term expired, they have pocketed their commissions, and gone home. He would not permit this to be done; he would cut it up by the roots. He would give them the reward which they ought to receive—the compensation allowed them, and the gratitude of their constituents.

Mr. Sharpe. This will not reach the evil. It will be necessary to go further, and say that no member shall receive any appointment the year after. Bargains made during the session, were sometimes consummated afterwards, and he would provide against that also.

Mr. Bacon said, that he was thankful, that his dealings with the departed council of appointment, had been pretty limited, he could not, therefore, enter into those sensibilities which were attempted to be excited in favour of their memory by the honourable the President.—That their trials and afflictions had been many and deep, as depicted by him, he thought probable; as had likewise been those of their sycophants, and persecutors for office—that they had each lived mutually tormenting and afflicting each other, there could be no doubt; such was always the lot of the wicked, and such it ought to be.—The section under consideration met with his approbation for this general reason, that it went to prevent a multiplication of offices in the same person which there was at least no use or necessity in uniting. There was in this country no dearth of materials with which to fill all our public offices, and that too with persons who were competent to them,—it might, perhaps, sometimes happen, that in point of talent and capacity, a member of the legislature would be rather better adapted to some executive or judicial office which was to be filled, than any other person to be found, who was not a member, but the case would not be so frequent, nor the disparity so great, as to produce any serious public inconvenience or prevent the state from being at all times well served.—While on the other hand, the effect of the exclusion upon the integrity and reputation of the legislature itself was of much moment.—Whether its character had heretofore been tarnished by sacrificing its independence to the desire of office, and whether subserviency to the purposes of party had been made the price of a commission from those who had it to bestow, it might, perhaps, be difficult directly to prove, and he would not, therefore, undertake to assert, but when we see, as we have done at no remote period, more than one third of a legislative body returning home with their commissions in their pockets, the people would inevitably draw from it some unkind inferences.

Messrs. Brooks, Root, and Tompkins, also expressed their sentiments respectively on the subject, when the question was taken on the amendment, and carried.

Mr. Munro offered the following amendment: "But a re-appointment to any office held at the time of his election is not hereby prohibited." Lost.

The question was then taken on the sixth section, as amended, and carried.

Whereupon the seventh section being under consideration, Mr. I. Sutherland offered the following amendment:

"No person, being a member of congress, shall be eligible to a seat in the legislature; and if any person shall, while a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat."

Col. Young was in favour of the latter branch of the section; but opposed to the first part of it. The operation of this section and the next, would, he said, if applied to the Convention, have excluded one half of the members; he considered it unnecessary, and an unreasonable restriction on the right of choice by the people; it would be well enough to say that the acceptance of an office under the general government, should vacate the seat of a member elected before he received such appointment; but if the people chose afterwards to confer their votes on a person holding such office, he could not conceive why they should not have the privilege of doing so; it belonged to the electors to say whether they would confide in one holding an office under the general government. They might believe such person to be best qualified to promote their interest in the state legislature. He did not believe that any evil could possibly grow out of leaving this discretion with the people themselves.

Mr. King opposed the amendment, and adverted to the complex nature of our government generally, and of the independence of the state governments for certain purposes, as well as that of the general government. The state of New-York is in some respects independent of the general government; in others she is not. We are members of both governments. The question before the Convention is, whether, as these governments are independent in themselves, as far as relates to the appointment to office, and as we are now called on to make a general law for this state alone, it will not be wise in us to preserve that distinction, which the independent nature of our government naturally suggests? Is it not important, in order to preserve the independence of the two, that their officers be kept distinct? If it is, the report of the select committee on this subject goes no farther in providing for this distinction, than the nature of the case requires. The gentlemen of this Convention, when they take into consideration the manifest importance of sustaining our independence in our own government, as well as in that of the federal union, will not doubt the correctness of this position. Many of the offices under the general government are of an important nature; and a man entrusted with the discharge of such important offices, ought not to be anxious to burthen himself with the discharge of duties under the state government. In attempting to serve the two, one or the other will be neglected.

We have no right to say, that if a man holds an office under our state government, he shall not hold one under the general government; but we can say, if he holds an office in the United States government, he shall not hold one in this state. It is my humble conviction, that it is important to the interest of this state, that the two governments, in this respect, be kept distinct; and I put it to the consideration of this Convention, whether there be not, in this state, a body of men sufficiently large to select for both purposes, leaving their duties unmingled? The answer to this must be manifest.

With respect to the remarks of the gentleman from Saratoga, to which I always listen with attention, finding them generally fraught with much good sense, does he not carry the principle too far when he says, that by restraining individuals, you limit the privileges of electors? If thus, by restraining, we limit the rights of electors, is it not the same when we say, that the judiciary shall not be permitted to mingle with the legislature; or the executive with either? We have no complaint on this ground: and with the same propriety may we say, that a man, holding an office under the general government, shall not hold an office under the government of this state: both being upon the principle of expediency, and both alike justifiable.

It is said, that we are jealous of the general government, and that it is without a cause. I am not jealous of that government. I should be rather disposed to increase its powers than to abridge them, had I not lived long enough to know that they are sufficiently strong already. I have not a doubt of the government of the Union being strong enough. I believe, that great power has a tendency to increase, rather than to diminish, and those acquainted with the progress of that government must understand the manner in which it will increase.

I am not apprehensive, that the rights of this state are about to be swallowed up in the rights of the United States; but I believe, that the time has arrived when the welfare of the individual states and that of the United States call for vigilance, and that we ought to look well to the independence of our state. I am aware, that the independence and happiness of the individual states depend on the independence and prosperity of the United States; but the progress of the power of the general government is such, that we are warned to be on our guard with respect to the interests and liberty of this state. Give to those, who may be called on to discharge duties under the general government, the privilege of serving this country in that way; but let them have nothing to do with the government of this state. The more gentlemen reflect upon the propriety of this principle, the more will they be convinced of its correctness. The period has arrived in which some rule ought to be laid down on this subject.

Mr. Bacon said, that he rose to vindicate this provision from the imputations which had been cast upon it by the gentleman from Delaware.

It had been alleged by him, that the principle here recommended, was a novel one, that it had grown up in this state only a few months since, out of a certain executive exposition,---and that it was indicative of a temper of disloyalty and hostility to the general government. As to these loud professions of loyalty to the general government, which were now so common, they had become in these days quite too cheap to be worth any thing. There was a time when they cost something since they exposed him, who made them to some little hazard, and, of course, were not quite so plenty,—but times had altered, they cost or hazarded nothing now, the general government was strong enough to stand without any more friends, and like a private individual who has no need of them, they had now no difficulty in finding them in great abundance. A reasonable degree of jealousy of the influence and encroachments of the national government upon the interests and independence of those of the several states, and a sedulous care to preserve the latter in all their vigour, was once a favourite and distinguishing republican doctrine, it was that of the political school in which he was educated, and he was not for being driven from it now by the modern cry of disloyalty and disaffection. In the early periods of our government, when its means of influence and of patronage were comparatively few and feeble, this doctrine may, perhaps, have sometimes been carried too far. But how was it now? Could any man be blind to the enormous increase of patronage and influence, which, in the course of events. and in the short period of thirty years the national government had acquired to itself,—to an amount which would once have startled even its warmest admirers. It was but a few years since, that the hand of that government was hardly felt at a short distance from its centre, and its existence as an operative machine, was hardly known beyond the sea-board. Few men in the interior of the country either knew or cared any thing about the offices which it could confer. How different was the case now. By means of its military, its naval, and its civil departments, it had spread itself over the whole surface of the country.—There was hardly a town or district in any state which did not furnish young men, who aspired to wear the epaulette of the United States, or to become a midshipman, a lieutenant, perhaps a commodore in the navy. Its civil offices of one grade or another, had become an object of desire and ambition in almost every log hut in the interior of the country. In fact, it came home now in one shape or another, to a great part of the business and concerns of the people. With its post-office department alone, which had been the subject of remark, it penetrated the inmost recesses of every state, and in the six or seven hundred officers attached to it in this state alone, it possessed a corps of almost

irresistible force, whenever it chose to bring them into operation,—and it might safely be said, that no single state which was any thing like nearly divided in itself as to its own political concerns, could, for a single year, resist the influence and force of the general government, should it be brought in earnest to bear upon them. Against whatever state party it was thrown in, that party must inevitably kick the beam. Should we then be deterred from looking this state of things in the face by any imputations of disloyalty to the union, and disaffection to the general government, or hesitate to provide such guards against its effect upon our state institutions, as had been thought expedient by nearly all the states who had formed or revised their constitutions within the last twenty years? And when we find that such is the fact, with what propriety or correctness can it be pretended, that the introduction of such a principle is a novelty and a heresy, the growth of a few months past. In looking over the several state constitutions it will be found that at least thirteen out of the twenty-four, being nearly all which have lately been adopted or revised, have this provision in its full extent,---not Massachusetts and Delaware, who may be supposed to be disloyal, but New-Hampshire, Connecticut, Vermont, Maryland, South-Carolina, Georgia, Kentucky, Tennessee, Louisiana, Indiana,—and above all, old Pennsylvania, the key stone to the union as she has been called, who is proverbially not only loyal and faithful to the union, but who has ever been thoroughly sound and democratic to the very core. Can it then be deemed either hostile or uncourteous as has been suggested, for New-York to assert the same principle. He begged the committee as well as the people of this great state, to think well of the duties they owed to themselves and their own characters and interest, and not through any squeamish fear of being considered as opposed to the general government, and from a hope, that they might be taken into the ranks of the loyal, rush blindly to an extreme on the other hand, which would only manifest our servility, and our forgetfulness of what was due to the standing of the great state for whom we are acting.

The amendment was further supported by the mover, and Messrs. Young and Root.

The hour of adjournment having arrived, the committee rose, reported progress, and obtained leave to sit again.

Mr. Fairlie moved to meet hereafter at 10 o'clock. Lost. Adjourned.

MONDAY, OCTOBER 15, 1821.

The Convention met at the usual hour, when the journals of Saturday were read and approved.

Mr. Van Buren said, that before the Convention resolved itself into a committee of the whole, he wished to submit a plan, for the ultimate division of the state into senatorial districts, and to provide for their election until that was done. Being chairman of the committee of the whole, this, he said, was the only course for him to bring it before the Convention, and without entering into a discussion of the merits of the various projects before them, he would content himself with a very brief explanation of the one he was about to propose.

He had not, he said, anticipated much difficulty on this subject, or any other connected with the report of the legislative committee. Without having carefully examined or minutely scrutinized the plan for the election of senators, reported by the select committee, he had acquiesced in its propriety, chiefly from the respect he felt for the very intelligent committee who had reported it. The discussion, however, which had already taken place in committee, had satisfied him, that though he would still prefer it to some of the plans suggested, it was however liable to such serious objections, as to render it extremely desirable that another and better should be attempted. Under these impressions, he had thought favourably of the course which had been suggested by the gentleman from Dutchess (Mr. Tallmadge) and had intended, as far as his situation would admit of his interference, to give it his support. The remarks of the honourable President yesterday, however, had entirely satisfied him, that it would be

unwise to attempt a division of the state into senatorial districts in the constitution, but that it ought to be left to the legislature. He was persuaded, that this was the only wise course: and to carry the resolution and suggestions of the President into effect, he had prepared a plan, which embraced also as much of the report of the select committee as was consistent with a future, instead of a present division, and which he would read.

"I. That it shall be the duty of the first legislature, under the amended constitution, to divide the state into districts, not less than eight in number, to be denominated senatorial districts; and to make a just apportionment of thirty-two senators, among the said districts. If the said division and apportionment, shall not be effected by the said first legislature, the same may be completed by the succeeding one.

"II That the said districts, shall not, hereafter, be less in number than eight; but their number may be increased. They shall consist of as equal a number of inhabitants, as may be, (excluding aliens, paupers, persons of colour not taxed, and convicts.) If a district shall consist of more than one county, the counties shall be contiguous to each other; and no county shall be divided in the formation of a senatorial district.

"III. That the first senate, under the amended constitution, and until a new division and apportionment of, and among the senatorial districts be made, shall be chosen by the four great districts, as they at present exist, in the following proportions, viz: The southern district, seven senators; the middle district, seven senators; the eastern district, seven senators: and the western district, eleven senators.

"IV. That as soon as the senate shall meet, after the first election, to be held in pursuance of the amended constitution, they shall cause the senate to be divided, by lot, into four classes, eight in each class, and numbered one, two, three, and four; and the seats of the members of the first class, shall be vacated at the expiration of the first year; of the second class, at the expiration of the second; and so on continually; to the end, that the fourth part of the senate shall be annually chosen.

"V. That when the state shall have been so divided into senatorial districts, by the legislature chosen under the amended constitution, it shall be the further duty of the legislature, making such division, to make a just apportionment of the senators elected, among the said districts.

Mr. V. B. said it would be perceived, that he left it in the discretion of the legislature, to divide the state into as many districts as they thought proper, not less than eight. He wished, however, to be distinctly understood, that he was opposed to thirty-two districts. He would not enter into the discussion on that point, because he should not be on the floor when the subject was under debate, and also, because he knew, that the reasons against such a measure would be urged by gentlemen, fully adequate to the task. He would therefore only say, that in his opinion, the notion of dividing the state into small districts, for the purpose of bringing the elected home to the electors, would, if carried into effect, share the fate of most popular notions; it would be running into an unwise and pernicious extreme, it would be carrying it to an extent, which could not be gone into, without seriously prejudicing one of the best features of that part of the constitution, which relates to the legislative department.

His plan, he said, proposed, that the division and apportionment should be made by the first legislature under the amended constitution; this he considered proper for many reasons. It was by no means certain, and was indeed very improbable, that amendments would be submitted to the people in time, for the next legislature to act upon them. But if they could be, it would still, in his opinion, be improper, for them to do so. First, because the division is to be made for, and to be binding on, the electors under the extended right of suffrage, provided by the amended constitution, and if the division and apportionment were made next winter, it would be made by men, who do not represent those for whom they act; which was utterly indefensible. Secondly, the different territories, which will be the subject of division, are not now represented in the senate in the same proportion, that they will be, under the right of suf-

frage, for which the division is intended. The southern and western districts, particularly, would be loosers, as neither of them had now as large a representation in the senate as they would be entitled to, under the new constitution. Thirdly, the same inequality and injustice would exist as to the house of assembly, who are to take an equal part in the work of division and apportionment. It would, therefore, both in principle and convenience, be wrong, that it should be done by the present legislature, if that was even practicable.

On an examination of the census, it would be found, that the division he had made among the great districts is in all respects equal; except that a little more was given to the southern and smallest district, than she was in strictness entitled to, but that was justifiable for several reasons.

He could not, he said, anticipate the objections, which might be raised to the plan he had proposed. There would be no difficulty in apportioning the senators elect among the new districts, as the nominations for the first senate would doubtless be made, with a view to a partition of the senatorial districts. If gentlemen should think it necessary, the power might be given to the legislature to vacate the seats of such members as should fall in districts beyond their proportion; but this he could not think, would be necessary, as the cases in which the apportionment could not, in consequence of the residence of the senators, be made perfectly equal, would be very limited; and such inequality, if it existed at all, would certainly be the least evil which could result from any course.

Without therefore, feeling any anxiety on the subject, other than that, which he presumed was common to all, he hoped the plan he proposed might be adopted; because he thought it under all circumstances, the best which had yet been proposed. He hoped so also, because it would relieve the Convention from the necessity of making a present division, which he thought objectionable. First, because the Convention had not the same information, which the legislature might have. Secondly, because they had not, consistently with the due discharge of their duties, in respect to the other important matters which remained yet to be acted upon, sufficient time to bestow on a work, requiring such critical and accurate examination, to afford the least hope of making it satisfactory. Thirdly, because, divide the state as they would, many counties would be dissatisfied, and he apprehended more danger to the final adoption of the amendments from the dissatisfaction arising from this source, than from any other. This consideration, if it was necessary now to make the division, ought to be disregarded; but inasmuch as the division and distribution could be more satisfactorily made hereafter, he thought the Convention might, with great propriety, suffer themselves to be influenced by it.

It was, he said, a fixed principle, with him, not unnecessarily to do any thing which might endanger the final adoption of the valuable amendments to the constitution which the Convention had already made, and others, which were contemplated to be made.

In conformity to a motion of Mr. Van Buren the said proposition was referred to the committee of the whole when on the legislative department, and ordered to be printed.

THE LEGISLATIVE DEPARTMENT.

On motion of Mr. Eastwood, the Convention then went into committee of the whole on the unfinished business of Saturday (the legislative department,) Mr. Van Buren in the chair.

The 8th section of the report being under consideration,

Mr. Brooks moved to amend the same by striking out the words—" judges of the courts of common pleas in the several counties, and,"

Mr. King explained the views of the committee in relation to the subject, and,

Mr. Fairlie opposed the motion.

Mr. Tompkins gave notice that he intended from time to time, to call for the previous question. Debates he said were had of great length, and not unfrequently upon unimportant questions. He would have no personal regard nor

invidious distinction in making such call, but he thought it a duty to the people of this state to curtail, if possible, the wide and extensive range of debate.

Mr. Radcliff said, that by the motion we should strike out the names of two hundred and fifty men in this state, and render those who were, in his opinion, proper candidates to be elected and hold seats in the legislature, wholly ineligible.

The amendment was lost.

Mr. King moved to strike out the words, "eligible to," and to insert the word, "hold," in lieu thereof; and also, to strike out the words, "under the government of this state," and to insert, "of the governor and senate, or the legislature."

Mr. Van Vechten was opposed to permitting the judges of the court of common pleas to hold seats in the legislature. Their appointments were derived immediately from the general appointing power, and they constituted one branch of the power which was to appoint all the justices of the peace in the state. This might enable them to exercise an undue advantage in obtaining a seat in the legislature; and when there, they might, by management, secure to themselves or their friends, offices in the gift of the general appointing power, to which their merit did not entitle them. He thought it would be wise to provide against this kind of management, by a clause in the constitution. When party runs high, men are frequently chosen, because they are nominated by a particular political class. Such a course might be, in a measure, prevented by a constitutional provision. If this provision be adopted, men will have their choice in which capacity to serve; and it will be in conformity to the great republican principle of rotation in office, not being eligible to a seat in the legislature, whilst enjoying the honour and emolument of other offices, to the exclusion of men equally meritorious.

Mr. Livingston would vote against the amendment, because he intended ultimately to vote against the whole section. First judges were not interdicted from holding seats in the legislature by the old constitution. Why? because they were considered men of the first talents and integrity in their respective counties. And it was, in his view, extremely improper that such men should be excluded from that body.

Mr. King said, the whole object of the section was merely to exclude such persons as held their offices under the governor and senate, or the legislature, with the exceptions contained in the section.

The question was then taken on Mr. King's motion, and carried.

Gen. Root thought the words, "officers of the militia," were superfluous and unnecessary. The different parts of the section were incongruous. It was not, in his opinion, competent for this body to say to the people, that they should not elect certain prescribed persons.

Mr. King observed, that the object of that provision in the section was to prevent officers in the army, should one be raised hereafter under authority of this state, from holding seats in the legislature.

The motion on the whole section as amended was then put and lost.

The question then recurred to the amendment proposed on Saturday by Mr. I. Sutherland, as a substitute for the seventh section, relative to the exclusion from the legislature of persons holding offices under the general government.

Mr. I. Sutherland remarked, that the effect of that part of the report of the committee which is now under consideration, is to limit the discretion of the electors of this state in the selection of their representatives. To prevent them from sending to either branch of the legislature, any one of their fellow citizens who may hold an office of any kind or description under the government of the United States, however he may be qualified in their judgment, by his talents, integrity, or experience, to promote their best interests. It assumes the broad ground, that every man, who accepts an office under the general government, becomes the subject of an influence hostile to the interests of this state, which renders it unfit and dangerous to suffer him to participate in the making of its laws. But it goes farther, and supposes, that powerful as this influence is, its effect upon the individual cannot be discovered by his fellow citizens, who are in the habits of constant intercourse with him; who hear his

opinions upon matters of government, and upon the various topics which are daily canvassed and discussed, and upon which the bias of his principles or his inclinations, one would suppose, would inevitably display itself. That it is unseen, at least, if not unfelt, until he enters the halls of your legislature.

The amendment, which I have had the honour of submitting, provides, that if any person shall, while a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat; proceeding upon the principle, that the character and condition of the representative is so far changed by his acceptance of the office, as to render it proper for him to go back to his constituents for their approbation. But assuming that the people are competent to judge of the qualifications of their representatives, and that they can as discreetly determine, whether the acceptance of an office under the general government renders them unfit to be entrusted with their interests, as they can, whether they are disqualified from any other consideration.

I am sensible, Mr. Chairman, that holding, as I do, an office under the United States, I am liable to the suspicion of being actuated by selfish considerations, in offering this amendment. I can only say, sir, that I am unconscious of the influence of such motives. I certainly cannot admit that my judgment is blinded, or my independence impaired, in consequence of holding a commission under the federal government. Feeling this to be true, in relation to myself, I am bound to presume that it is true with regard to other gentlemen who are similarly circumstanced. I cannot, therefore, assent to a proposition, which considers and treats us as a band of foreign mercenaries—as the fit and willing instruments of the general government, in any system of usurpation or encroachment, which the folly, the ambition, or the cupidity of its rulers may devise, against the independence or the interests of this state. Sir, in my judgment, we commit a great error in considering and treating the government of the union as a foreign government, whose policy and interests are hostile to those of the states. Their interests are the same; and there are very few cases in which it is possible for them ever to come into collision with each other: and instead of fostering a spirit of jealousy and distrust of that government, I think we should best promote the great and permanent interests of this union, by extending to it a liberal confidence and support.

The amendment which I have offered, guards against what I consider the only danger to which we can be exposed, by permitting the officers of the general government to hold seats in our legislature. The legislature, possessing the power of choosing the presidential electors, it is within the range of possibility, that the chief magistrate of the union, anxious to secure a re-election, may attempt to render the leading or influencial members of the legislature subservient to his views, by the gift of important or lucrative offices—though the very fact of an appointment under such circumstances, would excite a suspicion and alarm, which would, in all human probability, defeat the object. Yet I think it would not be wise to leave that avenue of approach open to the incursion of corruption or ambition. The amendment on your table, therefore, provides, that any member of the legislature who accepts any office from the United States, shall forfeit his seat.

Sir, the number of the officers of the general government in this state, is too limited, and their emoluments too small, to render them objects of jealousy, or alarm; even if their interests were hostile to the interests of the state. I think their number, including the highest and lowest grade, has been stated upon authority, to be between six and seven hundred—and without pretending to be accurate, or to possess the means of being so, I think I may venture to assert, that, exclusive of those who reside in the cities of New-York and Albany, the gross amount of all their emolument, does not exceed twenty thousand dollars per annum. But, sir, are all the ties which connect these individuals, with the state and its interests, broken by the acceptance of a commission under the general government? Have they not life, and liberty, and families, and connections, and property, to be affected by its laws, and to share the common destiny which awaits the people of this state? Does it, then, become this great state, possessing one eighth of the population of the union; pouring into the

public treasury one fourth part of its ordinary revenue—possessing a militia of one hundred and fifty thousand men; with a patronage which embraces more than fifteen thousand individuals; and dispenses more than a million of dollars annually—engaged in a system of internal improvement, which, in magnitude and importance, rivals the best efforts, of the best days, of the Roman commonwealth? I ask, does it become this great state, to place under the ban of its constitution, and exclude from all participation in the making of its laws, a portion of its citizens, thus insignificant in numbers and in influence, because they happen to be engaged in enforcing the laws, or collecting the revenues of the general government?—a government of our creation; whose institutions are of a kindred spirit with our own; and which rightfully exercises, within the limits prescribed by its constitution, a paramount authority through the land!

But, sir, we have been cautioned by the honourable gentleman from Queens, (Mr. King,) against the increasing power of the general government. It has been more than intimated, that it is gradually encroaching upon, and may eventually endanger the state sovereignties. I must confess, sir, that I was not prepared for such a suggestion, from such a quarter. I thought a contrary opinion was universal among the enlightened statesmen of this country; and notwithstanding the very great deference and respect which I have for all the opinions of that gentleman, I cannot but think, that in this he is in an error.

It has always appeared to me, sir, that if there was any one part of that celebrated work, the Federalist, which was pre-eminent above all others for the force and conclusiveness of its reasoning, it was that portion of it, which is employed in vindicating the constitution of the United States, against the charge of conferring powers upon the general government, which were dangerous to the independence of the respective states; and I have hitherto supposed, that the experience of this country had amply confirmed, upon this, as upon most other subjects, the speculations of the very distinguished authors of that work.

I do believe, sir, that a very brief consideration of the organization of our government—of the dependance of the general, upon the state governments, in many important particulars—of the limitation of its powers—of the superior weight of personal influence, which is enlisted in support of the state governments, in consequence of the great number of individuals engaged in their administration—of the predilection of the people for the state governments, growing out of various considerations, and of their disposition and means, to resist the encroachments of the general government, will dispel all apprehensions upon this subject. [Mr. S. here went into the discussion of this branch of the question at some length.]

I hope, Mr. Chairman, that I do not presume too much upon the liberality of this house, when I ask them to believe, that I am incapable of opposing any measure, the adoption of which, in my judgment, is called for by considerations of public policy, on account of its individual bearing upon myself. I do believe the exclusion contended for by the select committee, is unnecessary, impolitic, and unjust—that it improperly restrains the people in the choice of their representatives—that if the principle upon which it proceeds is well founded, it should have carried them still farther, and they should have put the officers of the federal government on the footing of aliens throughout.

Mr. Radcliff was not altogether satisfied with the section as reported, but thought the proposition of the gentleman from Schoharie was going too far. It would enable the judicial officers of the United States, whose tenure of office was during good behaviour, to hold seats in the legislature, whilst judicial officers of our own state holding for the same term were excluded. That was an inequality which he thought was not proper. He should prefer to amend the section by striking out the word "civil," and insert in lieu thereof the word "judicial."

Mr. I. Sutherland consented that his motion should be made to conform to the views of the gentleman from New-York, (Mr. Radcliff.)

Chancellor Kent hoped the amendment would not prevail. By adopting the section as reported by the committee, we would do no more than conform to most of the constitutions which had been formed since the adoption of the constitution of the United States. Mr. K. enumerated several constitutions

which provided that officers of the general government should not hold seats in their state legislature. The select committee, he said, had adopted this section, not from any jealousy against the general government: for himself he entertained no jealousies; so far from it, his greatest hope and reliance for the future prosperity of this country, was in that government. Without its general superintendence and protection, he should despond: it was wisely administered and possessed his entire confidence. The state governments, standing by themselves, he feared would not be sufficient for the protection of property. He did not, however, mean to be understood, as wishing that they should be abandoned: they ought to be supported, and guarded against encroachment. The gentleman from Schoharie, he said, had ably and clearly stated the reasons which would operate to preserve the state governments from being destroyed by the general government. This government, he said, was stronger than it was first supposed it would be; it had at its disposal an immense revenue—a revenue arising from impost duties, and therefore not immediately felt by the people, which rendered them less scrupulous with regard to the expenditure; it had besides a great patronage; foreign ministers and very many other officers which were objects either of ambition, or sought after from a desire of gain; it was, therefore, very proper from prudential motives, to guard against the exercise of the power and influence of the general government on the local concerns of the state. A case had occurred, he said, of a judge, under the United States' government, holding his office during his good behaviour, being a member of the senate of this state; he alluded to this circumstance, not from any disrespect to the individual, nor did he mean to say, that he had not faithfully and uprightly discharged the duties which belonged to him as a senator of this state; but barely to state the fact, that such an occurrence had taken place. That one individual, had united in himself the office of a senator, and as a judge of the court of dernier resort; a member of the council of appointment, and at the same time holding the office of judge under the general government; this he considered to be improper, and he would therefore be in favour of a constitutional provision to prevent it in future. He would, he said, again repeat, that he had no jealousies against the general government, he admired its judiciary, he had full confidence in that, and every other department.

The question was taken by ayes and noes on Mr. Sutherland's amendment as modified, and carried, as follows:

AYES—Messrs. Beckwith, Breese, Briggs, Brinkerhoff, Buel, Burroughs, Carver, Case, R. Clarke, Collins, Cramer, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Ferris, Frost, Hallock, Howe, Humphrey, Hunt, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, President, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Root, Rose, Rosebrugh, Ross, Russell, R. Sandford, Seely, Sharpe, I. Smith, R. Smith, Starkweather, Steele, I. Sutherland, Swift, Tallmadge, Taylor, Tripp, Van Fleet, Ward, A. Webster, E. Webster, Wheaton, Wheeler, Woods, Yates.—67.

NOES—Messrs. Baker, Barlow, Brooks, Carpenter, Child, D. Clark, Clyde, Hunter, Jay, Jones, Kent, King, Lansing, Munro, Paulding, Rhinelander, Sage, Sanders, N. Sanford, Seaman, Sheldon, Sylvester, Townley, Townsend, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Wendover, Woodward, Wooster—33.

Gen. Root then wished to know the reasons which had induced the committee to recommend the ninth section of the report, now under consideration.

Messrs. Kent and King severally explained, and said that the conferences as at present directed, were only calculated to produce collisions, to array the two houses more and more against each other, and to confirm them respectively in their preconceived opinions.

Mr. Sharpe was in favour of the section as reported. Experience had shewn these conferences to be useless and a mere legislative farce.

Mr. Tompkins was in favour of abolishing the 15th article of the constitution, but he thought no section necessary for that purpose, as it would be abolished of course.

Gen. Root remarked that the honourable gentleman from New-York, (Mr. Sharpe) had denominated these conferences a legislative *farce.* It sometimes happens, said Mr. R. that the farce is the most entertaining part of the performance. These legislative farces are usually acted on the eve of the close of the session, so that they occasion no loss of time. Mr. R. adverted to cases within his recollection, and contended that they were useful, and at all events brought home to the knowledge of the people such facts as would enable them to judge which house was in the right.

Mr. King said, that the constitution was now imperative upon the legislature, and required them to enter into such conference. But were this requirement done away, yet it would be competent for the legislature to resort to this mode of adjusting differences of opinion, if they thought proper.

In reply to the suggestion of the gentleman from Richmond, he would remark, that it was necessary to provide specially for the abolition, unless the Convention should think proper to re-draft the constitution.

Mr. Fairlie was opposed to the section.

Mr. P. R. Livingston would vote against expunging the fifteenth article of the old constitution. It was true, that the practice under that clause had sometimes been productive of evil consequences; and at other times it had done a great deal of good. With regard to the conferences between the two houses, at which he had had the honour of attending as a member of the senate, they had generally terminated with beneficial results; although they were not very frequent, as on bills of trifling consideration, it was not compatible with the dignity of the two houses to come together. The business was generally settled by informal committees. There was one very good reason for wishing to abolish that article, and it was the only one which could be with propriety urged, by those who should vote for the abolition of it, and that was, that the most popular branch of the legislature, always has an undue influence over the senate. By keeping the senate from mingling with the other branch, it would preserve, in a measure, the independence in that body, which was of vast importance.

Believing that no evil would result by retaining the article, and that there possibly might from expunging it, he should vote to preserve it.

The question being then taken on the 9th section as reported by the select committee, it was lost.

On the 10th section, (vesting the power of impeachment in a majority of the members of the assembly and removal from office on the joint vote of two-thirds of the members of both houses.)

Chancellor Kent called for a division of the subject. He wished first to have the sense of the committee ascertained in relation to the subject of impeachment. The residue, providing for the removal of judges by joint resolution of the two houses of the legislature, was a distinct question.

Mr. Dodge said that his object in calling for the reading of the article of the constitution on this subject, was to move an amendment to the report, and make it conform to the provision in the old constitution; to authorise a bare majority to impeach, would be dangerous, and would subject officers to be persecuted from political motives.

Mr. King was particularly anxious not to be misunderstood on this important subject. He would yield to no man in respect—in veneration for that noble institution, the judiciary. He wished it to be independent in the exercise of its honourable duties. He solemnly disclaimed the idea of applying any of these regulations to existing men, or to past transactions. All that he wished was to accommodate them, in some degree, to public opinion, which, on this matter, had undergone, and was undergoing, somewhat of a change in this country. There was danger of pushing the principle of the independence of the judiciary to such a length as to destroy it; nay, more, so as to destroy the institution itself. If we wished to preserve the judiciary as handed down to us by our ancestors, in its arrangement of a division of the departments of law and equity, and that admirable system of itinerant judges for the trial of causes, which were again to be submitted to the revision of the same judges sitting in the superior courts, we must concede something to the public opinion of the

state, as to the responsibility of the judiciary. This was not said in hostility, but in friendship to it. There was throughout the country, an universal respect and love for those venerated men who administered its justice. So long as they behaved well, no class of public men would be more secure of the public esteem and confidence. He would preserve to them that confidence, by abstracting them from all other concerns, and giving them fixed and adequate salaries, so as to relieve them from all solicitude, except for the faithful performance of their duty. But, at the same time, it was the part of true wisdom to follow, and sometimes to anticipate, the progress of public opinion on this and other subjects connected with our establishments; and it could not be concealed, that the people of this state were dissatisfied with the existing means of enforcing the responsibility of the judges, for the possible abuse of their great powers.

He repeated that the judiciary was a department of the government, entitled to the honour, respect, and admiration of all men. But it is the only department over which the people have no direct control. The legislative and executive departments are changing and variable, and directly responsible to the people. He admitted the necessity of giving to the judges an independent tenure for life, or for a term somewhat approaching the ordinary life of man. But do we, at present, rest secure in the delegation of the judicial power, which is the most important in the state, and which touches life, character, and property? It is true that the duration of their term of office might be supposed to render the judges independent of any unworthy bias. But still there should be a supervisory authority over them, which should always be vigilant, and sometimes even vindictive: which should be swift to punish their offences, and to preserve the purity of the judicial character from contamination by the misconduct of its members. The time may come when this authority ought to be exercised. If this be not possible, and even probable, then all that has been said about checks, and balances, and responsibility, is idle and unavailing.

An honourable gentleman had alluded to England. But what, he asked, was the comparative situation of the two countries in this respect? Mr. King here explained the history of the judicial establishment of Great-Britain as fixed in the reign of William and Mary. He believed an instance had not since occurred of an application to the crown for the removal of a judge. But it had frequently happened that parliament had addressed the crown for the removal of other great men. And there was a memorable instance where the house of commons demanded the dismissal of the younger Pitt, in the beginning of his career. They then asked his removal from his majesty's councils and presence forever. What was the king's answer? That they had preferred no specific charges against the minister. To which the commons replied, that he had lost their confidence, and it was the undoubted right of the people of England to demand it on that ground alone.

Mr. K. thought it ought to be the right of the representatives of the people to remove without being required to prefer specific charges. He should be willing to give the judiciary all the independence that arises from the permanency of their office and of their salaries—but when it was evident that they had justly forfeited the public confidence, there ought to be somewhere a power of removal. He would give them *all* power to perform their duty, but *no* power to depart from it. He concluded by alluding to the judges of Carthage, who drew to themselves all power, and by abusing it, destroyed the government of that famous republic.

Mr. Radcliff was in favour of the section as reported. The provision of the existing constitution has led to injurious consequences. It is at present altogether nugatory—for no man connected with a party can be expected to be successfully impeached if the existing impediments are continued. As well might you expunge the power of impeachment entirely from the constitution, as to suffer it to remain as it is. One third of the legislature may always be found to sustain an individual of eminence and standing.

Gen. Tallmadge said he was opposed to this part of the section. He was in favour of requiring two-thirds to impeach; the power of impeachment, was

unnecessary to punish for crimes, the courts of justice, are sufficient for that purpose. Impeachments he said were usually from political motives, and he thought it not safe, to vest this power in a bare majority.

Mr. Buel. He was in favour of the section, as reported.

Mr. Munro moved to amend this part of the section, so as to require a majority of the whole number elected to impeach. In New-Jersey, he said they required a majority of the whole number elected to pass a law, and then they had the ayes and noes entered on their journals.

Chancellor Kent said he was apprehensive that this would weaken the judiciary and destroy the upright and impartial administration of justice. If the section should be adopted as reported, it would require but thirty-three members to prefer an impeachment: a majority of the assembly was a quorum authorized to do business, sixty-four members would be a majority of the whole number, thirty-three was a majority of such quorum, and would have the power of impeachment.

If the amendment offered by the gentleman from Westchester, should prevail, he would then have no objections to the section. He had no apprehensions for himself; he had no sins to answer for; and as far as he was personally concerned, he did not care if the power to impeach should be vested in ten men.

Gen. Root believed it to be important to retain the section as reported, and he did not know why it should be required of us to intrench the judicial office more strongly in this state than in any other government in the world. Even in England, under a monarchical government, and where the judges hold by the tenure of good behaviour, they are liable to be brought before the bar of the house of lords by a simple majority in the house of commons. In that government, it was easier to get at and to punish malversation in the judicial office, than it was in any state in the union. In the general government, a majority in the house of representatives may impeach, but it requires two-thirds of the senate to convict. So it was in all the states in the union, except Delaware, which probably copied after the state of New-York.

The power of impeachment had been likened to the inquest of a grand jury; but to preserve the analogy, it would be necessary, on the principle of the amendment of the gentleman from Westchester, that, in order to find a bill of indictment, there should be a majority of all the grand jurors that were *summoned!*

The power had never been abused in the general government, nor was it liable to abuse even in party times. If an unjustifiable measure is about to be perpetrated by a party, it will be more likely to be done under the subsequent part of the section, which authorizes a removal on the concurrent resolution of two-thirds of both houses of the legislature, without the cause being assigned. In England, notorious as it is for profligacy, this measure has rarely been resorted to; and he thought that, in this state, judicial officers might continue to play the tyrant to a considerable extent, and yet be safe. The constitution of the United States is the pride of our country and the admiration of the world, and he thought no danger was to be apprehended from following its example.

The amendment was further supported by the mover, and Messrs. Dodge and Kent, and opposed by Mr. Livingston; when the question being taken thereon, the same was lost.

The first part of the section then recurred as reported.

Mr. Jay observed, that the whole doctrine of impeachment is an anomaly in our government. We give the whole power of accusing, trying, convicting, and punishing, to the legislative department. In England it was given to guard the people from the encroachments of the crown. The king is there the great fountain of justice, and supposed to preside in his courts; but the maxim that the king can do no wrong, required that his ministers of justice, on whom fall the responsibility of his acts, should be amenable for their conduct. It was introduced there from the necessity of the case, and adapted to the nature of their system. But we adopt it here—and it ought to be so modified as to be safe. In England, the injustice of impeachments was well known. The case of chief justice Tresilian, and of lord Bacon, were flagrant instances, and posterity has reversed most of the impeachments that were had.

This power had been likened to a grand inquest; but it differed from it in many important particulars. A grand jury is selected for the very purpose—they act under the immediate influence of an oath, and according to known and established rules of law. But, in case of impeachment, it is otherwise.

The governor of the state is liable to be impeached. He is now to be an annual officer. It usually takes more than one season to go through with an impeachment. How easy, then, would it be for a majority (made perhaps by the vote of a single member) to impeach the executive, and thereby suspend him from his office till his term of office should have expired? And this, too, might be done in a time of war—at an important crisis of public affairs—and the vital interests of the country be thereby put at hazard. Mr. Jay also contended that there was no necessity for this power. Adequate remedy could be had in the courts of law, for those offences that were not susceptible of sufficient punishment from the frown of public opinion.

Mr. P. R. Livingston was more and more confirmed in the belief, that when imagination entered into the committee of the whole she leads to error. She is in pursuit of the substance, but finding she cannot overtake it, she lights on a shadow, and ultimately finds not even the shade of a shadow. He ascribed great credit to the honourable gentlemen for brilliant imaginations, but said it was the worst of all possible basis to build on. It was like a foundation of sand, upon which a building might be erected, but could not stand. The gentleman has told us that at the close of a session, an individual might rise up, and, with a little exertion, succeed in effecting an impeachment of your chief magistrate, which would ruin him for ever. If he was anxious to render himself popular, he would continue to be impeached; and let it be known to the people that it was unjust, notwithstanding he might sustain a temporary embarrassment; if there was virtue or intelligence in the republic, he should be sent back, and placed upon the immutable rock of popularity. It is said that the judiciary will be broken down. It ought to be broken down; and had it not been shielded by the constitution, it would have been broken down long ago. Since the adoption of our present constitution, every governor in this state has been a member of that judiciary except Mr. Clinton. It is a power that looks down all opposition, and when directed to effect political objects, is, of all others, the most to be dreaded. That power ought to be in the hands of the people. Would they break down the judiciary when it was guided by integrity, and the duties discharged with ability for the public good? No; the people would pride themselves in such a judiciary, and would go to the last extremity in sustaining their character; but when their talents are directed to improper objects, as has been the case for a few years past—when the individuals of that body have been the greatest political calculators in the state---and when electioneering gamblers have risked their fortunes upon the judgments of these men; is it to be wondered that public excitement has been raised so high as to demand for the people the privilege of exercising the power which so justly belongs to them? The people will never be anxious to break down the judiciary without just cause, and if such cause exists, as heretofore, let it be broken down.

The reputation of the judiciary should be like the character of a female, beyond suspicion; for when once suspected its usefulness is gone. Let an individual be tried before a political judge, who may differ in politics with him, however correct his decision, if against him, that individual will feel that the judge was prejudiced; and that judge who would not be thus affected, must be more or less than man.

Mr. Van Vechten was as willing as any man to have the judiciary held responsible. He did not like political judges better than any other man; but thought it ought not to be in the power of an individual, or number of men, to break down for resentment, a judiciary for the sake of promoting their own private interests, or to shield themselves from imputations not chargeable to the judiciary. The constitution under which we had lived for many years, required two-thirds of the assembly to impeach. He was not tenacious to retain that, but supposed to require a majority of all the members elected, would not be asking too much. In the case of a grand jury, a majority of the number sum-

moned was sufficient to indict; and he knew no good reason why a majority of the members elected should not possess the power of impeaching. He was willing, and indeed anxious, that this power should be vested somewhere, and that it should be rigorously executed when public good required it. The judiciary were a barrier between the other branches of the government, and it was indispensable that their duty be discharged with fidelity and promptness; but he was not disposed to put the rod into the hand of one branch of the government, unless there was some limits set to the exercise of their power.

It must be allowed that your governor, although he has a power of veto, as he is elected only for one year, will never exercise that power; hence the importance of an able and vigilant judiciary, who may guard the rights of the people against legislative encroachment; but will they dare to act with this rod over their heads?

A trifle will impeach a judge, and when once impeached, his removal is inevitable, if upon no other grounds than that his character has been destroyed by the impeachment. However fair it may appear afterwards, the impeachment is sufficient ground of argument against him. He was opposed to the clause as reported by the committee.

Chancellor Kent was opposed to the amendment to the thirty-third article of the constitution (which now required two-third parts of the members present to agree in an impeachment) unless it was so altered as to require a majority of all the members elected to concur in the impeachment. There was no necessity for such an amendment: and the history of this state had never furnished an instance of the want of such a provision. Why sharpen the edge of this penal power, when, by the amendments already made to the constitution, we had diminished the influence and weight of the judicial, and rendered the government much more liable than before, to the impulses of faction? The council of revision had been abolished, and the senate had left the stability of resting solely on the landed interest. It had become a repetition of the house of assembly, excepting only a greater term of duration. The executive had left the strength and firmness of a three years' term, and had been rendered feeble; and the danger was, that the assembly would become predominant, and absorb all essential power and influence within its impetuous vortex. In the constitution of Delaware, there was the same provision requiring two-thirds to impeach as in our constitution; and in three of the new constitutions recently formed to the westward, there was a provision that to impeach required a majority of all the members elected. With such a check he would be contented. It would be most dangerous to allow a bare majority of the members present to impeach. They were not specially sworn for the purpose, like a grand jury, and would be liable to be suddenly swayed by the arts and declamation of some popular but unprincipled leader. The assembly at present consists of one hundred and twenty-six members, and a bare majority of a majority would be only thirty-two. Surely such a small portion ought not to be trusted with a power so liable to be perverted in factious and tempestuous times.

If the assembly was to be likened to a grand inquest, the analogy is not preserved, for it required a majority of all the members of a grand jury summoned and sworn, to concur in an indictment.

There was no analogy to be drawn from the case of the power in the English House of Commons. They were a stable body, chosen for seven years, and the court to try consisted of the hereditary peers. The judges in England were also independent of the commons in their salaries, and were surrounded with the protection of the crown.

By the subsequent part of the same provision reported by the select committee, the judges were to be liable to be removed without cause shown, by a vote of two-thirds of each house of the legislature. Why this jealousy, and this disposition to excite alarm and prejudice against the judicial power? They were a perfectly safe power, and miserably dependant for their support—all their acts and proceedings were before the public, and they were checked by a jury on trials, and by the senate on error or appeal. If we impaired their necessary independence, we endangered the rights of property, the security of personal liberty, and the landmarks of the constitution.

He was not solicitous about this power on his own account. He was perfectly indifferent about it, as it respected himself, for he had the consolation of the *meni conscia recti.* He withdrew his mind from the present generation, and looked to the future. He believed the power, as reported, might become a dangerous engine of faction and oppression, and that our posterity might have occasion to shed tears of distress over the abuse of this power. He had witnessed with concern the inflammatory remarks made this day upon the character of our judiciary. He recollected the remark of the learned Hooker, that those who, in popular assemblies, undertook to find fault with rulers, were always sure to find listeners and admirers. But he was certain that the judiciary of this state, instead of meriting this constant and injurious animadversion, was entitled to universal respect and confidence.

Mr. P. R. Livingston was not conscious of having indulged in vehemence ; and although he might have made some expressions which were not so agreeable to gentlemen present, still he believed he had used no language which would be unjustifiable by facts. Will my honourable friend from Albany pretend that the judiciary have not been engaged in politics ? What brought them into this Convention—they well knew that the council of revision had excited public odium ?

Does not the name of this very man appear the second in order upon the committee who made the report now before us, which he so strenuously opposes ?

Can any man imagine that the great body of representatives of the people will impeach any one of that department from party views ? In the highest party times (and party has probably run as high as it ever will again) when both parties have had an opportunity of assailing them, they have never been touched ; nor will they ever be while they attend to the duties of that department as becomes the judiciary of this great state. When the public becomes so corrupt as to be willing to break down the judiciary without a cause, they will be prepared for another state of things ; and when they have made up their minds on that subject, who can restrain them ?

After further debate on the subject, in which Messrs. Tallmadge, King, Fairlie, and Buel took part.

Mr. Sharpe moved to reconsider the motion of Mr. Munro, which, after some debate, was carried ; and the ayes and noes being required on the final adoption of Mr. Munro's amendment, the same was decided in the affirmative, as follows :

AYES—Messrs. Bacon, Baker, Barlow, Beckwith, Breese, Briggs, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Case, Child, D. Clark, R. Clarke, Clyde, Day, Duer, Edwards, Fairlie, Fenton, Ferris, Fish, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunter, Huntington, Jay, Jones, Kent, King, Lansing, Lawrence, Lefferts, A. Livingston, M'Call, Millikin, Moore, Munro, Nelson, Paulding, Pike, President, Price, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rockwell, Rose, Rosebrugh, Ross, Russell, Sanders, Seaman, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Starkweather, Steele, I. Sutherland, Sylvester, Tallmadge, Townley, Townsend, Tripp, Van Fleet, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, Wheeler, Woods, Woodward, Wooster, Yates.—87.

NOES—Messrs. Carver, Collins, Dodge, Dubois, Dyckman, Eastwood, P. R. Livingston, Park, Root, Sage, N. Sanford, R. Sandford, Swift, Taylor, A. Webster.—15.

The question was then taken on the first part of the section as amended, and carried without a division.

Mr. Duer expressed his sentiments in opposition to the residue of the section to the proviso, and moved that the same be referred to the committee of the whole, when on the judiciary department. Lost.

The usual hour of adjournment having arrived, the committee then rose and reported.

In Convention. Mr. Fairlie moved to refer that part of the report of the com-

mittee on the legislative department which relates to the designation of the senate districts, to a select committee. Lost.

The Convention then adjourned.

TUESDAY, OCTOBER 16, 1821.

The Convention met as usual, and the journals of yesterday were read.

Mr. Dodge wished they might be amended, by changing the votes of him self and Mr. Price, in the record of the ayes and noes taken yesterday on an amendment offered by Mr. Sharpe. The minutes thus amended were approved.

Mr. Hunter moved, that the expenses of the funeral of his colleague, (Mr. Jansen,) be paid out of the treasury, by the perm ssion of this Convention. Carried.

THE LEGISLATIVE DEPARTMENT.

On motion of Mr. Ross, the Convention then resolved itself into a committee of the whole, on the unfinished business of yesterday (the report on the legislative department.)—Mr. Van Buren in the chair.

Mr. Dodge moved to re-consider the 5th section (relative to the pay of members of the legislature) for the purpose of adding the following clause:

" And no laws shall be passed increasing the wages of the legislature beyond the sum of (three) dollars per day, unless by a majority of all the members elected to both branches of the legislature, and unless it shall be limited as to the continuance to two years after the passage thereof, and the ayes and noes shall be taken thereon and be entered on the journals."

The question on reconsidering was decided by ayes and noes in the affirmative, as follows:

AYES—Messrs. Bacon, Barlow, Beckwith, Brinkerhoff, Buel, Burroughs, Carpenter, Carver, Case, Child, Collins, Cramer, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Ferris, Fish, Hallock, Howe, Humphrey, Hunt, Hunter, Kent, Lansing, A. Livingston, P. R. Livingston Millikin, Moore, Munro, Nelson, Paulding, Radcliff, Reeve, Richards, Rockwell, Ross, Russell, N. Sanford, Seaman, Seely, Sheldon, R. Smith, Starkweather, Steele, I. Sutherland, Sylvester, Tallmadge, Taylor, Townley, Townsend, Tripp, J. R. Van Rensselaer, Verbryck, A. Webster, Wheeler, Woods, Woodward, Wooster, Yates, Young—63.

NOES—Messrs. Breese, Briggs, R. Clarke, Fairlie, Fenton, Frost, Jay, Jones, King, Lefferts, M'Call, Park, Pike, President, Price, Rhinelander, Rose, Rosebrugh, R. Sandford I. Smith, Swift, Van Fleet, Van Horne, S. Van Rensselaer, Ward, E. Webster, Wendover—28.

The question was then on the amendment.

Mr. Dodge called for the ayes and noes.

Mr. Buel declared his sentiments in favour of reducing the pay of members. It had heretofore been an object to obtain a seat in the legislature, for the purpose of making money. He wished the compensation to be sufficient to defray their expenses and no more. Gentlemen would then come here from patriotic motives—despatch their business as soon as possible, and not protract the session for the sake of the emolument.

Mr. Sharpe said that the pay of the members of the legislature was lower than that of any of the public officers in the state. Three dollars per day was a meagre compensation, and could be no inducement for a gentleman to leave his family and business; and by reducing it as low as had been proposed, many men of talents would be excluded. Look at the judges of the supreme court and the canal commissioners, who receive a compensation of about twelve dollars a day throughout the year.—Were the other officers to be effectually cur-

tailed in their receipts, he had no doubt that the members of the legislature would be willing to reduce theirs, also.

Mr. Dodge said that the gentleman from New-York (Mr. Sharpe) did not seem to understand the amendment. It was not his object to fix absolutely the pay of the legislature, but to establish a *maximum* beyond which they should not go. Unless that were the case, no limit could be assigned to the exercise of their cupidity, and they might exhaust the treasury of the state. There might be times when two dollars might be an adequate sum, whilst at others six would not be too great. It was his object therefore, to establish a suitable medium for a given and limited time.

Mr. Briggs thought that there should be a clause in the constitution, requiring that the legislature should keep open doors when the subject of compensation was debated, and that the governor should issue a proclamation at least twenty days before hand, that the people might flock in and hear the discussion.

The question on the amendment was then taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Bacon, Baker, Barlow, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, Clyde, Collins, Cramer, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Ferris, Fish, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunter, Jones, Lansing, A. Livingston, P. R. Livingston, Millikin, Moore, Munro, Pumpelly, Reeve, Richards, Rockwell, Russell, Sanders, N. Sanford, Seaman, Seely, Sheldon, R. Smith, Starkweather, Steele, I. Sutherland, Sylvester, Tallmadge, Taylor, Townley, Townsend, Tripp, Van Horne, Verbryck, A. Webster, Wheeler, Woods, Wvodward, Wooster, Yates, Young—66.

NOES—Messrs. Breese, Briggs, Brinkerhoff, Brooks, R. Clarke, Fairlie, Fenton, Frost, Huntington, Jay, Kent, King, Lefferts, M'Call, Nelson, Park, Paulding, Pike, President, Price, Rhinelander, Root, Rose, Rosebrugh, Ross, R. Sandford, Sharpe, I. Smith, Swift, Van Fleet, S. Van Rensselaer, Ward, E. Webster, Wendover, Wheaton.—34.

Gen. Root replied to the gentleman from Montgomery, (Mr. Dodge) and denied the imputations that had been made with respect to the squandering of time, and skulking from the journals by the members of the legislature. The most vile and virulent papers in the state, had never made such gross charges against them.

Mr. Dodge explained, and said that he derived his information from the gentleman from Oneida, (Mr. Bacon.)

Gen. Root replied, that such an apology would not screen the *publisher* of a libel, even if he had not been the *inventor*. He despised putting into the constitution the contemptible sum of a stipulated price *per diem*.

Mr. Bacon explained at considerable length, and expressed his belief that in many cases members had felt reluctant to have their names recorded. He had been once or twice honoured with a seat in the legislature, and in one instance he knew the fact, that a new member of that body repeatedly called for the ayes and noes without success.

The question on the whole section as amended was then taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Bacon, Baker, Barlow, Beckwith, Brinkerhoff, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, Clyde, Collins, Cramer, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Ferris, Fish, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunter, Jones, Lansing, A. Livingston, P. R. Livingston, Millikin, Moore, Munro, Pumpelly, Reeve, Richards, Rockwell, Russell, Sanders, N. Sanford, Seaman, Seely, Sheldon, R. Smith, Starkweather, Steele, I. Sutherland, Sylvester, Tallmadge, Taylor, Townley, Townsend, Tripp, Van Horne, J. R. Van Rensselaer, A. Webster, Wheeler, Woods, Woodward, Wooster, Yates, Young.—66.

NOES—Messrs. Breese, Briggs, Brooks, R. Clarke, Fairlie, Fenton, Frost, Huntington, Hurd, Jay, Kent, King, Lefferts, M'Call, Nelson, Park, Paulding, Pike, President, Price, Radcliff, Rhinelander, Root, Rose, Rosebrugh, Ross, R. Sandford, Sharpe, I. Smith, Swift, Van Fleet, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton—39.

The latter part of the tenth section was then considered; which provides that all officers may be removed by a joint resolution of both houses of the legislature.

Mr. King was as sensible as any man, of the importance of allowing the judiciary to hold for a long term; of permitting the judges to hold even for the ordinary term of human life, in order that they might have nothing to hope or to fear, as long as they persevered in the line of their duty. They are usually selected from the foremost ranks of the bar, at a period in their professional career when they are in the midst of their greatest usefulness and prosperity. They could not return to the bar again and resume their practice. They ought therefore to be set apart, and consecrated, as it were, for this high function; but, at the same time, they ought not to be lifted above responsibility. The constitution of this state was very deficient in this respect, more so than that of any other in the union. It had not been the intention of the select committee to make them impeachable by a majority of a bare quorum of the house of assembly. When we speak of a majority of the members of the assembly, we mean of *all* the members of that house. But he had cheerfully acquiesced in the amendment, proposed from abundant caution, and the word "elected" had been accordingly inserted. The question was now on the provision for removing the judges by joint resolution, which had been reported with a view of securing their responsibility in cases where they were not liable to impeachment. It was fit that such a power should exist, and he feared if it should be opposed, that other projects fatal to the judiciary, as now organized, would be brought forward. He hoped that the Convention would not countenance such projects coming from any quarter, and that we should still continue to enjoy the inestimable blessings of an enlightened administration of justice in that mode which experience had pointed out as the best.

Chancellor Kent was also in favour of the section as reported. There were many causes that might render the removal of a judge expedient, without affording a proper ground for impeachment, where his faculties were impaired by casualty or sickness, infirmity, intemperance, &c. He would be glad to interpose a barrier against the effects of party spirit, but on the whole he believed there could be but little danger that two-thirds of a legislature would deprive a judge of his office without sufficient cause.

Mr. Munro moved to amend the section, by striking out the words "joint resolution," and insert "by the governor at his discretion, upon the address of the houses."

The question on the second clause of the section to the proviso was then put and carried.

Col. Young offered the following substitute for the proviso: "That two-thirds of all the members elected to the assembly, and a majority of all the members elected to the senate, concur therein."

Mr. Van Vechten hoped the amendment would not prevail. It had been said that the senate were a more stable body, being elected for a longer term, and therefore it would be right that a majority of them should decide upon a question, when in the assembly two-thirds must be required. The senate would always partake, more or less, of the sentiment that pervades the other house, and when a law is passed in both houses, and shall be pronounced by the judiciary unconstitutional or unjust, will it not excite hard feelings in these two branches of the legislature? Your judges, however they may be bound by all the ties which ought to govern them in the faithful discharge of their duty to the people, will feel themselves restrained. They ought not to be liable to a removal, unless the charges preferred against them are so palpable, that two-thirds of both houses should concur in the measure. Mr. Van Vechten could see no good reason, why two-thirds of the assembly should be required, and only a majority of the senate: until this could be shown, he should be opposed to the amendment.

Mr. Wheaton opposed the motion of the gentleman from Saratoga. The report of the select committee, of which his honourable friend from Queens, (Mr. King) was chairman, went quite far enough in subjecting the judges to the supervising authority of the legislature. The ancient constitution of this

state, made them removable only by impeachment; and it required two-thirds of the house of assembly to accuse, and two-thirds of the senate to convict. The Convention had yesterday determined that the power of impeachment might be exercised by a bare majority! Now it was proposed to go a step farther, and to ordain that two-thirds of the assembly, and a majority of the senate, might remove the judges from office, without notice to the accused, without assigning cause, and without a hearing. In his opinion, this would destroy the reasonable independence of the judiciary, as a co-ordinate branch of the government, intended for the protection of the lives, and liberty, and property of every citizen; and that, too, sometimes, against the legislature itself. Experience was the best and safest guide on this and other subjects of constitutional policy. By the constitution of the union, the judges could be removed by impeachment only, whilst at the same time, they held during good behaviour for life. In some of the local state governments, they were removable by impeachment only; in others, by joint resolution, or joint address: but in all the state constitutions where they were removable otherwise than by impeachment, the assent of at least two-thirds of *both* houses were required, and frequently that of the governor. The Convention had just rejected the amendment of his honourable friend from Westchester, (Mr. Munro,) requiring the concurrence of the governor: and now we were called upon to lay the judiciary at the feet of the legislature. It was true that the constitution of Massachusetts, as recently proposed to be altered, required a bare majority of the senate and two-thirds of the house to remove a judge. But it should be remembered that the assent of the governor and of the council was also required by the existing constitution of that respectable state; and that the senate was there chosen upon the basis of property, the senators being apportioned among the different districts, according to the amount of taxes they contributed. A majority of that branch might, therefore, be considered as equivalent to two-thirds of the other house.

Col. Young replied at length, and remarked that the constitution of several of the states in the union authorised the removal of judges on the recommendation of a bare majority of the legislature, and not an instance could be found in which that had been abused by an improper removal. They will always be secure if they do not mingle in the conflicts of party, and confine themselves to the proper duties of their office.

Mr. Edwards said, that if this motion prevailed, the judiciary would be placed upon too dependent a footing. But he was in favour of placing judges, as well as all other men in whose hands power was placed, upon a responsible footing. With that view, he had sanctioned by his vote the report of the select committee; but that he was apprehensive we were now in danger of pushing accountability to a pernicious extremity. It is true, sir, he said, that we have heretofore suffered in consequence of judges being placed upon too independent a footing; but in our solicitude to avoid evils arising from this source, we must be cautious that we do not involve ourselves in the consequences arising from rendering the judiciary too dependent. The ground which the committee has taken, I am satisfied, is the true medium, and will answer well in practice. On the one hand, it will maintain the judges in the independent and faithful discharge of their duties, and on the other, will prevent them from setting public sentiment at defiance. This state is frequently agitated by violent parties, and it is desirable that the sanctuary of justice should be placed beyond its impulses. It may be that your judiciary will be brought in conflict with the legislature. It is, among other things, their duty to stand as sentinels to the constitution, and to guard against legislative encroachment. If they should pronounce an act of the legislature unconstitutional, they might arouse a violent spirit of hostility. For an act of this kind the legislature of Ohio impeached some of its judges. The same thing may occur here. I would have every department of the government duly respected, and would place every one of them upon such a footing as to protect them from the violence of any other department. If you intend that your judges shall be firm and upright magistrates, faithful guardians of the constitution, and of the rights of the people, you must place them upon so stable a footing that they cannot be blown away by every

party impulse in your legislature. It frequently happens that one party has two-thirds in the house of assembly, and if these, together with a bare majority of the senate, can remove the judges, they will be exposed to removal upon party grounds.

It should be borne in mind, that one section of the report of the committee provides that a majority of the house of assembly may impeach, and two-thirds of the senate convict. If, therefore, there are specific charges against a judge which can be substantiated, he can be removed in this mode. The section now under consideration provides for the removal of a judge, without assigning any charge. This seems, at best, to be a very arbitrary proceeding, though I can readily imagine cases in which it may be proper to adopt it. It does appear to me, however, that it is a remedy which ought not to be resorted to, but by the assent of two-thirds of both branches of the legislature ; and if, by adopting this amendment, you sanction the resorting to it by any number short of that, I very much fear that you will place your judiciary upon a very fluctuating establishment.

It ought, sir, to be borne steadily in mind, that the regulations which may be adopted for the government of the judiciary, are not made for the good of the judges, but for the good of the people. The welfare of the people of this state, requires that we should have a judiciary establishment, and that a certain range of duties should be assigned them. To enable the judges to perform those duties, it is necessary that they should enjoy a certain degree of independence—not for their good, but the good of the people. It is, therefore, deserving of our serious consideration, whether, under the regulation proposed, they will enjoy that independence. In my humble opinion, they will not.

Gen. Root remarked, that, as the senate was organized in a way to secure a great degree of permanency, one half of its members would always be found ready to oppose popular caprice and sudden excitement. The independence of this country, he said, was placed on mistaken grounds. We had borrowed the idea from England ; but in that country, the independence of the judiciary was obtained to secure the people against the encroachments of the crown. In this country, the people represent majesty, and the analogy would lead to the idea that it was therefore necessary to secure the people from the usurpations of the people—or, in other words, to protect them from themselves !

The honourable the Chancellor has told you, that for himself he has no apprehension in relation to the provisions of this section. He places his hand on his heart, and assures us that he is supported against the fear of popular imputation by the *mens sibi conscia recti*. And does he suppose that his brethren are destitute of that support and consolation? If not, why does he wish to hedge them in from public investigation? Why the extraordinary efforts to protect them? Political judges might indeed want some shield—some security against the scrutinizing eye of investigation. But, said, Mr. R. render the judiciary a judiciary, *and nothing else*. It will then be safe, and enthroned in the affections of the people.

The question on Col. Young's motion was then taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Barlow, Beckwith, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dubois, Eastwood, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, A. Livingston, P. R. Livingston, M'Call, Park, Pike, President, Price, Pumpelly, Reeve, Richards, Rockwell, Root, Rosebrugh, Ross, N. Sanford, R. Sandford, Seely, Sheldon, Starkweather, Steele, Swift, Tallmadge, Taylor, Townley, Townsend, Tripp, Van Fleet, A. Webster, E. Webster, Woods, Woodward, Wooster, Young—58.

NOES—Messrs. Bacon, Baker, Breese, Buel, Dodge, Duer, Dyckman, Edwards, Fairlie, Fish, Hallock, Hunter, Huntington, Jay, Jones, Kent, King, Lansing, Lefferts, Millikin, Moore, Munro, Nelson, Paulding, Radcliff, Rhinelander, Russell, Sanders, Seaman, Sharpe, I. Smith, D. Southerland, Sylvester, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, Wheeler, Yates—43.

Gen. Tallmadge moved further to amend the section, by adding, at the end of the proviso, the following words: "That the cause or causes, for which such removal may be required, shall be stated at length, and inserted on the journals of the respective houses of the legislature." Lost.

The question was then taken on the whole section, including the proviso as amended, and carried without a division.

On the 11th section, requiring the assent of two-thirds of the members present in both houses to the passage of any act of incorporation.

Mr. Radcliff thought the provision too broad, and would be glad to hear the reasons which had induced the committee to propose it.

Mr. King said the committee had looked upon the multiplication of corporations as an evil. They have been created for a great variety of purposes. These corporations, he said, were exceptions to the common law; they could not be proceeded against in ordinary way of prosecutions against individuals in ordinary courts of justice. Twenty years ago they were considered as heresies. The first attempts which were made to introduce them were resisted and defeated; but they had since become very common; and he believed, were generally admitted to have produced great public mischief.

Mr. Child moved to insert between the words, "bill," and "creating," the words, "appropriating public monies for local purposes, or." Amendment carried.

Mr. Radcliff said, we appeared to be going from one extreme to another. He would agree to some restriction on the too great facility of extending corporations, particularly with regard to monied institutions. The report would go to require two-thirds of the legislature to incorporate a village, bridge, or turnpike. He would, therefore, move to insert after the word, "any," the following words: "bank or monied institution in this state."

Mr. Sharpe was in favour of the amendment as reported. Two-thirds would never be wanting to incorporate a village, or a turnpike.

Mr. King had understood, that a law of this state had already provided for turnpikes and religious societies, that they may be formed without coming to the legislature for an act of incorporation. That the common law abhorred monopolies, was a doctrine well known to the most superficial reader of jurisprudence. We ought not to increase them, but to diminish them as far as we can consistently with the preservation of vested rights.

Mr. Radcliff withdrew his amendment.

Mr. Ward moved to insert the word, "elected," in lieu of the word, "present." Carried.

Mr. Hunter proposed an amendment, the purport of which was, that the legislature should never in future grant a bank charter, except upon the condition that the individual property of all the stockholders should be holden for the redemption of all the notes or bills they might issue. Lost.

Mr. Duer moved to insert the words, "or private," after the word, "local," in the amendment of the gentleman from Saratoga, (Mr. Child.) Carried.

The question was then put on the section as amended, and carried.

Twelfth Section. This provides for the inviolable preservation of the school fund, and that the tolls collected on the canals, the duties on salt, and on sales at auction; shall remain an inviolable fund to be applied to the payment of the interest, and reimbursement of the capital of the money expended and to be expended in making the said canals.

Mr. King explained the views of the select committee, particularly on the part relating to the school fund, and moved to divide the section, so as to include that clause only in the present discussion. Agreed to.

Mr. Wheaton moved to insert (from the report of the select committee, of which the honourable Mr. Radcliff is chairman) after the word, "that," in the first line, the following words: "the proceeds of all lands belonging to this state, which shall hereafter be sold or disposed of, together with."

Col. Young proposed to amend the amendment, by inserting after the words, "to this state," the following words: "and of all lands that may hereafter be acquired by the state."

Gen. J. R. Van Rensselaer was opposed to both the amendments that had been offered; they would lead the people to suppose, that the lands thus appropriated were of vast value, and would supersede the necessity of all other funds, when in reality they were not all worth, perhaps, a hundred thousand dollars. There was, to be sure, nine or ten hundred thousand acres, but much of it could never be inhabited. In the valleys, there were some lands that would support a small population, and there were quantities of iron ore, which might be useful hereafter, as well as a great deal of valuable timber. But he would much rather have a constitutional provision that the state should give a certain sum of money annually for the promotion of education. He was deeply impressed with the importance of making provisions for the furtherance of useful science to every class of the community, as on that depended, in a great measure, the happiness and prosperity of the state. He would go as far as any other gentleman to accomplish that object; but it did appear to him, that giving these lands would not accomplish that object, and would afford a mere pretext for not doing that which would be useful. It will probably be said, we have given for this purpose near a million of acres of lands—this is certainly very liberal; when at the same time, no man would receive it as a gift, and be compelled to pay the taxes on it for thirty years. Such an appropriation would be a name without the substance.

Mr. Sharpe hoped the amendment would prevail. We had, he said, disposed of the greatest part of the public lands, with an unfortunate degree of profusion. It was desirable to appropriate the scanty residue to a valuable purpose. Applications were continually pressing upon the legislature for the making of side-cuts, lowering of riffs, &c. and it was high time to devote what was left, to the better, and higher, and more permanent interests of the state.

Mr. Radcliff was also in favour of the motion. He expressed his deep conviction of the immense importance of the diffusion of knowledge among the people. It was the surest bulwark of our liberties. Without it no republic could survive, and with it, despotism would cease. Where rights are generally understood, they will be defended. Tyranny can never long maintain its sway over the empire of intellect. Its sceptre falls with the diffusion of knowledge. A sister state, (Connecticut,) with a territory, population, and resources vastly less than ours, has a fund devoted to this great and invaluable object that almost equals our own. It was a state distinguished for its intelligence, patriotism, and virtue. Every effort that should be successful in disseminating knowledge through the community, was, in his opinion, contributing not only to the happiness of the recipient, but to the prosperity and political liberty of the state. The provisions before the committee would enlarge the school fund *far beyond* what had been supposed. It would, in his opinion, create an additional fund, greater in its extent than that already existing, and have a prodigious effect in the advancement of education. Mr. R. considered it as important a provision as any that had been made; and in order to show its extent, he craved leave to present the following statement, which he had obtained from the comptroller and surveyor-general.

" In 1814 the surveyor-general reported to the legislature the quantity of unsold land, belonging to the state at that time. See senate journals of 1814, page 19. The following is a copy of part of his statement:

	Acres.
Tract between the Scaroon branch of the Hudson's river, the townships of Hoffman and Totten, and Crossfield's purchase,	16,322
Oxbow tract, west of Benson township,	48,938
Part of township No. 11, old military tract,	37,077
Do. No. 12, do.	10,066
Do. No. 1, do.	8,218
Do. No. 27, Totten and Crossfield's purchase,	5,549
Do. No. 25, do.	4,033
Tract in Essex, Henry's survey,	26,022
N. E. corner of Palmer's purchase,	7,643
North River head tract, partly in the towns of Keene, Elizabeth, and Moriah,	19,183

	Acres.
Paradox tract, in Schroon and Moriah,	1,098
Tract in the county of Greene,	3,383
Scroon tract E. of Scroon Lake,	5,768
Brant Lake tract, S. of Scroon tract,	18,432
Westfield tract in Washington county,	1,564
South Bay tract, do.	5,063
North-west Bay tract, W. of Lake George,	2,845
French Mountain tract, E. of do.	1,306
Cincinnatus military tract,	85
Township of Benson,	35,457
Iron Ore tract, partly in Elizabethtown,	27,854
Peru Bay tract, on Lake Champlain,	20,573
Split Rock tract, do.	2,719
Trembleau tract, do. opposite Schuyler's island,	2,880
Fort Ann tract,	2,888
Additional in the town of Fort Ann,	805
Saddle Mountain tract, near the head of South Bay,	417
Part of To. No. 12, old military tract,	39,146
Do. No. 1 and 2, do.	35,438
South of Ticonderoga,	319
Luzerne tract, N. W. of Fort George,	168
South of Oneida Castle,	428
Fish Creek reservation,	5,845
North tier of Massachusetts, ten townships,	5,082
Military tract, in scattered parts, about	2,000
Stirling township, chiefly fragments of lots, out of which grants have been made, pursuant to acts from time to time passed by the legislature,	7,062
Acres,	411,774
On the west side of Lake George, N. of North-west Bay,	7,464
On the E. side of Hudson's River, N. of Jessup's 7,550 acre patent,	4,253
East side of Lake George, south of Wormer's Bay,	465
West of Skeenesborough and north of Artillery patent,	3,670
In Essex county, N. of No. 3, of P. Rogers's patents,	7,850
Part of To. No. 1, old military tract,	8,784
South of do.	1,814
Part of To. No. 2, do.	35,673
To. No. 9 and 10, do.	128,000
Part of To. No. 11, do.	8,960
In Totten and Crossfield's purchase, about	200,000
S. W. of Totten and Crossfield's purchase, about	230,000
Total, acres,	1,049,107

"The islands in the Niagara river, and Carleton island, and the isle on Long Sault in the river St. Lawrence, not having been surveyed, nor any means of ascertaining their contents obtained, are not comprised in the estimate. Also, the lands reserved for village lots and their accommodation at Oswego, Black Rock, Lewiston, and the Oneida Castle, and the Stedman farm on the Niagara river. Besides which, there is a gore left between the old military tract and the tract granted to the Canadian and Nova-Scotia refugees, to supply deficiencies, and also a gore along the Pennsylvania line, left for a similar purpose. It is yet uncertain what will remain after the purposes for which they are left shall be answered. It will, however, not be considerable."

Some of the above lands have been sold since the date of the surveyor-general's report, and other lands have reverted to the state. The comptroller, in his last annual report to the legislature, stated the amount remaining unsold at 970,000 acres, and it is about the same at present. To make an exact account of the unsold land in each tract, would require considerable time and labour, and would, perhaps, be of very little more use than the one now presented, which, it is hoped, will be sufficient for the purposes of the committee.

With respect to the value of the unsold lands, it is believed, that by far the greatest part of them are not worth more than from twenty-five to fifty cents an acre. They are mostly in the northern parts of the state, in the counties of Essex, Warren, and the eastern part of Montgomery, being mountainous, rocky, and barren.

Besides the above mentioned lands, there was purchased, about fours years since, a tract from the St. Regis Indians, of which there remains unsold about 6400 acres, valued, by the surveyor general, at six dollars per acre, amounting to 38,400 dollars. This value was estimated in 1817.

It is proper also to state, that the Oneida Indians still retain about - - - - - - - - 15,000 acres
And the Onondagas - - - - - - 300

22,300 acres

Which the surveyor general, in the same year, valued at 10 dollars per acre, making 223,000 dollars. These lands may hereafter come into the possession of the state. (See note at the end of this statement.)

There is also the Onondaga Salt Springs reservation owned by the state, which the late comptroller supposed to be worth 300,000 dollars, appropriated to the canal. See act of 30th March, 1820, chap. 117.

Exclusive of all the above, the state owns the following lands, which are appropriated for particular purposes, viz.

For the literature fund, about - - - - - 3,500 acres.
For the support of the Gospel and schools, a number of lots, quantity unknown.
For the Common School fund, all the lands in the military tract, which may escheat to the state. The quantity recovered within two or three years past is 25 or 30,000 acres, and will continue to increase.
Lands, given by the Holland Company, Mr. Hornby, Mr. Granger, to the state, for making the canal. Value unknown. In the county of Cattaraugus, there are - 100,632 acres.
Steuben county - - - - - - - 4,000

104,632 acres.

The proceeds of Grand Island, in the Niagara river, are also appropriated by law to the canal fund.

Comptroller's Office,
September 15, 1821.

After the preceding statement was made out, it was revised by the surveyor general, who added the following note:—

In the plan of Black Rock village there are remaining unsold lots to the amount of - - - - - - - - 604 acres.
In Lewiston - - - - - - - 327
Stedman's farm - - - - - - - 511
Fort Niagara - - - - - - - 716

Amount on Niagara river, except islands - - 2228 acres.

In the Oswego villages between 600 and 700 acres.

In the St. Regis reservation there remains yet belonging to the Indians about 16,000 acres, besides the 640 acres or mile square, on Grass River.

The motion was further opposed by Messrs. Sutherland, M'Call and Russell, and supported by the mover and *carried*.

Mr. King moved further to insert after the words "by the state," the following—"except such part thereof as may be reserved or appropriated to the public use, or ceded to the United States." Carried.

Gen. J. R. Van Rensselaer moved further to add the following provision;

"It shall be the duty of the legislature annually to apportion, and add to the fund denominated the school fund, at least the sum of thirty thousand dollars, until the said fund shall in the whole amount to the sum of $5,000,000; and the interest on the whole fund shall be annually distributed and applied to the support of common schools."

Col. Young opposed the motion. It was neither more nor less than a naked proposition to lay direct taxes for the purpose of increasing the school fund.

Gen. Van Rensselaer replied, when the question was put and lost.

The first part of the section as amended, relative to the school fund, was then carried in the affirmative, without a division.

On the residue of the section relative to the canal fund.

Mr. Russell moved to amend so much thereof as relates to the duties on salt, and the tolls on the canal, by substituting therefor the following:

"That the tolls on the navigable communications between the great western and northern lakes and the Atlantic ocean; and the duties on the manufacture of salt within the state, as may be established by the legislature, shall be inviolably appropriated and applied to the payment of the interest and reimbursement of the capital of the money already borrowed, or which hereafter shall be borrowed to make and complete the navigable communications aforesaid, and for no other purpose whatever."

Mr. King remarked, that the duties and tolls were pledged by the legislature as the representatives of the people, and he thought the Convention were bound to sanction that pledge. No additional assurance is required. It is only to confirm what has been already promised. The faith of the country has gone forth, and those who are intrusted with the public honour, cannot recall without redeeming it. The western part of the state was doubtless destined to be the most populous part of it. They will furnish a majority in the legislature. He alluded to that part of the state, and the members of it, with great deference and respect. But the history and condition of mankind have shown, that when men are impelled by interest, and possess the power of relieving themselves from a burthen, they are extremely apt to lighten it off from their own shoulders. He would merely allude to a state of things that might hereafter exist. And were the state of things reversed, it would, in his opinion, be perfectly proper that the South should then be put under bonds. What is a mortgage, a common instrument, but a pledge for good behaviour? Mr. K. said he was not wanting in respect or affection for his western brethren, but in fidelity to the common interest of the state, the committee could not do less than recommend such a provision. There was no intimacy that could forbid such a proposition, even among brothers. The state derived great honour from the magnificence of this work. And do we not expect to receive great advantage from it? Why, then, should we be averse to confirming a pledge that was made in good faith? The pledge is mutual. It is a pledge on our part also that the work shall go on, and that future funds shall be created to ensure its completion. The different parts of the state were bound up in one society, and connected by the strongest sympathies of interest and feeling.

Mr. Russell said that the requiring a pledge of this kind to be incorporated in the constitution, could not be regarded in any other way than as to express a distrust of the integrity of the people of the western part of the state; and he must therefore resist it: He was confident that there was no good reason for this jealousy; the people of the west would have no disposition to violate the faith which had been pledged.

Mr. Nelson. From the report of the committee, and the explanation given by the honourable chairman, it would appear that the duty on salt in the western district is not only to be inviolably appropriated to the payment of the interest and redemption of the principal of the canal debt, but that the amount of that duty is to be fixed in the constitution. We are told, that it was pledged by the act of 1817, and that we ought to renew it in the Convention. When that law was passed, and the pledge given, a Convention was not expected; why then should we engraft it in the constitution? Let us leave it as we find it.

By the act of 1817 the duty on all sales at auction, with the exceptions then mentioned, were pledged in conjunction with the salt duty. Why have not the committee fixed in the constitution the amount of those duties, so as to prevent legislative discretion hereafter on that subject?

In the same act also a tax of one dollar per passenger for every 100 miles, was laid on steam boat possengers, and pledged for the same purpose in conjunction with the salt duty, and that upon auctions. Why is not that tax perpetuated by constitutional provision ? All these funds were raised by the same act, and pledged for the same purpose—and why make any distinction between them, if there must be a constitutional provision ?

Mr. Nelson was not unwilling that the revenues which government may see fit to collect from the salt on the canal, should be inviolably appropriated to the extinguishment of the canal debt. They have been so pledged by the act of 1817, but the amount of that tax or toll ought to be left to legislative regulation.

The distribution of the burthens of government is a subject of legislation, not for the Convention. It is the business of the persons administering the government to devise ways and means for meeting its expenses, or raising money to carry on public improvement. The amount of the duty on salt is not a subject of complaint among those whom it is supposed most immediately to effect. It is not that they desire to get rid of the payment of the duty, that I object to its being fixed in the constitution : but, sir, the affairs of this state may change with the times, and the interest of the people may require that this duty should be abolished or reduced ; if those times should arrive the legislature ought not to be prevented by constitutional prohibition.

Suppose, sir, the revenue derived from the canal tolls should be so great that, in a few years, that alone would redeem the canal debt, might it not be wise in the legislature to reduce the revenue realized from the salt, and leave the discharge of that debt to the tolls ?

Or, suppose the legislature should believe the interest of the community required that a part of the duty imposed upon salt should be taken off, and laid upon some other subject of taxation, ought they not to have the power of doing so ? By fixing the amount of the salt tax, you deprive the western part of this state of the benefit of legislative experience and discretion on this subject. The tax imposed on steam boat passengers has been modified by a subsequent legislature, so may be the duties on salt, or any other pledge given by act.

Mr. Nelson said, it looked like an unreasonable jealousy of one part of the state toward the other, or of those who are to come after us. Gentlemen from the west might as well indulge in squeamish jealousies of the south or north, and for fear they might hereafter impose an enormous tax upon our western salt, ask this Convention to fix it in the constitution, that no legislature should raise the tax above one shilling per bushel. If they will not trust the west in the legislature, lest they might be disposed to reduce the tax, the west should not trust the south and the north, lest they may raise it.

But it is unreasonable and unjust that the Convention should legislate for posterity, or for any particular portion of this state. The subjects, of taxation ought in his opinion, to be left to the discretion of future legislatures, whose dignity and honour would never permit them to act contrary to public faith or public good. Unfounded jealousies never ought to be indulged, and he never could consent to vote for a clause in the constitution avowedly based upon a want of confidence of one section of this state in the other.

Col. Young was very sorry that gentlemen in different parts of the state should regard this as a local question. He thought it was a subject in which all sections were equally interested. In relation to the salt duty he would observe, that within three years the people of the east would consume the western salt, and when the New-York market will be entirely supplied with salt from the western salt-works ; it was now sold at Utica for two shillings per bushel, including the duty of twelve and an half cents. When the communication with the North River should be completed, this salt might be brought to the city of New-York, and sold there for less than half the sum now paid for salt in that market ; and the whole state would then consume no other salt but this, and every man who purchased a bushel of it, would pay one shilling towards the canal fund ; In the west, the people had already reaped great advantage from the canal. Notwithstanding the duty of twelve and an half cents per bushel, the western people now paid no more for the salt than they did before the duty was imposed.

The toll which the commissioners had established, was extremely small; not exceeding one cent per ton, and on salt about half a cent. To carry a ton from Albany to Buffalo, by land, he said, cost from ninety to one hundred dollars. When the canal was completed it would be carried for about seven dollars. It did, therefore, appear to him, that there ought to be no objection to this provision from any quarter.

Mr. Eastwood said they had no objection to the price of the duty which was now put on salt, but they were not willing it should be put into the constitution. If the amendments were separately presented to the people, he had not much fear about it: but the people of the western counties would be up in arms about it, if the constitution should be made anew, so as to require a single vote upon the whole or none.

Gen. Root observed, that he had rather have no provision at all in the constitution, respecting the canal pledge, than to insert that of the gentleman from Erie, (Mr. Russell.) This fund was pledged to those who made the loan. Pass this amendment, and it would be paramount to the statute of 1817, and it would release the legislature from that pledge. The people have power undoubtedly to violate that pledge; but the *power* is one thing, and the moral *right* is another. A few years ago a local tax was pretended to be imposed on the lands bordering on the canal. He was aware at the time, that it was a mere pretence to gild the pill. But every effort since that time, to levy and collect that tax, has been fruitless and unavailing.

But it is said, that we must rely on the legislature, and that the people will be magnanimous. He was aware that if the pledge was continued, some might feel the weight of its obligation, but if the amendment obtained, it would wholly cease to operate. Some legislators were not much restrained by pledges. A steam boat tax was once levied and pledged for this purpose, but a subsequent legislature, under the shield of modification, reduced it to $5000, and magnanimously appropriated Grand Island to supply the deficiency. The pledge of 1817 had not, therefore, remained inviolate, but it was not entirely gone, and he wished to save the remainder by a constitutional provision. Suppose no such provision should be made. What will be the consequence? A new census will shortly be taken and a new apportionment made, when your northern and western canals, and your lateral cuts, will cut in upon two-thirds of the legislature, and vote down the tolls and duties all together. Your legislature has already voted away and got rid of your lands, and we are told, on this floor, that if we require them to pay their debts, the western country will be in arms. If this be the case, it is best to try the experiment soon. Hercules is yet young, and may be bound. The lion of the west, of whom we have often heard, is yet a whelp, not full grown; let us then, endeavour to curb his ferocious power before he tears us in pieces. From five to ten millions of dollars are fastened upon us already, from which there is no escaping. The farms of all the good people of Delaware are mortgaged for the payment, when, at the same time, they derive not the least possible benefit from it. They have then a right to demand, that the inducements that were held out, and the faith that was solemnly pledged, should be redeemed by an irrevocable provision in the constitution. Good faith requires it. Common honesty requires it. It was the right of his constituents to demand it.

Mr. R. entertained no jealousy of his western brethren. As individuals, he would repose in them with a secure and unsuspecting confidence. But as a public body--in a collective capacity, it was as unreasonable to ask, as it was foolish to expect, the performance of those promises which individual justice would scorn to violate. The faith of public bodies is well understood; and the same man, who, as an individual, would shrink from every act that savoured of injustice, would often, in a public capacity, be guilty of violations of duty that were wholly irreconcileable with justice and duty. They would pocket private honesty, and adopt political expediency.

Mr. R. proceeded to investigate the progress of the canal—the pretences that had been made use of—the policy that had been resorted to—the inducements that had been held out—the direct promises and pledges that had been made, until at last it became a hobby so very alluring, that the only anxiety

was, which political party should get foremost astride of it, and spend with the greatest profusion the public treasure. It was not his expectation that all the golden promises would be realized. On that point, as on many others connected with it, his hopes were few and feeble ; but he did feel, that it was both his right and his duty to claim the punctual and assured fulfilment of that pledge which the statute book had recorded.

Mr. Bacon said, that it could not be concealed, that this question was one which had some local bearings on a particular part of the state, over other parts ; to be called to act on such a question, was always undesirable, and placed the representative of that portion of the state who were more particularly affected, in a most invidious and unwelcome situation. If he voted in favour of that interest, his conduct would probably be attributed to personal or local interest, and if he voted against it, it might appear like the affectation of magnanimity which could not be appreciated, and might be noticed only to be scoffed at. In the vote which he thought it his duty to give, he would make no such professions. Where the interest of his constituents, or of the state at large, was in question, he had no right to be magnanimous in the ordinary acceptation of the term. He professed to be governed only by considerations of what he thought was required by general principles of justice and good policy to the interests of the state, and was not inconsistent with the true interests of the district which he in part represented. Such, in his view, was the provision reported by the select committee, and he was willing to adopt it.

It could not be doubted, that although the great public and private benefits to be derived from the future use of the canals, and the revenue expected from them, were in some good degree common to the great body of the people of the state, yet in some respects they would undoubtedly be more particularly beneficial to that portion of the people inhabiting the western and northern sections of it, and they might therefore, reasonably be expected to contribute something more than their equal share, or at least to hazard something more towards refunding the sums advanced for their construction. It was in that view, that the $250,000 tax on lands adjacent to them, was originally contemplated ; that however had been suspended, and he had no doubt would be entirely abandoned, because it had been, and ever would be, found impracticable to be executed with any tolerable equality, and so expensive in its collection, as to render it not worth the cost of effecting it.

The legislature had, however, laid a small duty upon salt manufactured in the western district, and the canal commissioners had established a rate of tolls upon all articles passing on the canals. This duty, and these tolls, it was conceded on all hands, were extremely small and moderate in their amount, and no one now complained of them. It might, however, be more for the immediate and supposed interest of that portion of the inhabitants, who consumed that salt, and who transported their commodities on the canals, to have both these impositions either essentially reduced, or wholly abolished. No one contended now, that such a wish was a reasonable one, or would venture to advocate it. But it was a question touching the local interests of large bodies of people ; the temptation to regard only those interests was a strong one, and the subject was one on which they were always liable to be excited and agitated by designing and ambitious men. It was a spirit, which, whenever awakened, could not be resisted, even by those more considerate amongst them who thought it unwise. In all future struggles of parties, it was to be feared if this question was left open, that rival factions would ever resort to it in every election, for the purpose of gaining partizans to their standard, and every candidate for a popular election, must stand pledged to the repeal of the salt tax, and the canal tolls, to ensure his success, and thus, not only the district, but the state, would be brought in perpetual agitation ; for he was yet to learn that there was any project so profligate that some faction could not be found who were willing to force it into their service, when it could serve a temporary or local object. We had already sufficient materials for that purpose, and those who were willing to spend their lives in tending the fires of faction, or in quelling them, were welcome to the employment. It was his wish to remove them so far as might be from their reach. He would put it to gentlemen, who with himself

represented that section of the country, whether if this proposition of paying these duties and tolls, at their present low rate, as the condition of having the canals constructed and completed, had been originally offered to them and to their constituents, they would not, one and all, have at once and cheerfully closed with it, as a most fair and advantageous bargain on their part. Most certainly no one would have hesitated. What, then, we should gladly have done originally, he was willing now to comply with, trusting to the moderation and good sense of those people for his justification. It has been from the enlarged and liberal views of the state at large, that they have been furnished with this great avenue to the ocean, and he was willing to meet these views with a corresponding spirit of justice and good faith, on the part of those who unquestionably would derive from it some advantages peculiar to themselves. Whether he should, in this course, stand singular and alone, he knew not. It was sufficient for him, that he complied with what was his own sense of justice and good feeling towards every portion of the people of this state, and he would not, in this view accede to the amendment proposed to the section by the gentleman from Erie.

Mr. King remarked, that it seemed to be supposed that a jealousy existed in the southern and eastern parts of the state, greater than the occasion would justify. He would advert to a case that he thought in point. The treaties with France, Holland, and other foreign powers, during the revolutionary war, and before the adoption of the constitution, contained provisions to secure the repayment of monies borrowed, not only of pledged faith, but such as made the obligation on the *territory* the land of the states. And these treaties, with such provisions, were declared to be not merely contracts, but the supreme law of the land.

Chancellor Kent was also opposed to the amendment of the gentleman from Erie, and adverted to the recent constitution of Connecticut, in which the charter of Yale College, the school fund, and pecuniary obligations, were laid under a renewed, constitutional pledge. We were now about to change our constitution from the beginning to the end. Would it, then, be expedient, or wise, to shrink from a measure to give stability to public credit, which it was our interest and glory to support? The furtherance of the canal must depend upon future loans, and would money-holders hereafter trust the state, when it was found that they would not, by a solemn constitutional act, confirm the pledges already given? Would it not create a distrust that would be extremely injurious? Better would it have been that the question had never been agitated, than agitated and rejected. To leave it to the legislature under these circumstances, would be injurious to that public credit, which, like the delicacy of female reputation, could be maintained and assured by a substantial verdict in its favour. The legislature is a fluctuating body. It rises and falls like the mercury in a thermometer, and if this amendment should be adopted, public credit would, in his opinion, sink fifty per cent. It would be like referring to a mortgagor the power of diminishing the number of acres included in a mortgage. He agreed with the gentleman from Saratoga, that there was a common interest to the various parts of the state, which it was the duty of every friend of his country solicitously to preserve and foster.

Mr. Nelson replied—he said he regretted with the honourable gentleman from Albany, (Mr. Kent,) that this subject had ever been brought into discussion in this Convention: and if the consequences were to follow from a rejection of this part of the section, which he predicted, (a fall of our credit fifty per cent.) he (Mr. Nelson) felt no part of the responsibility. He found the section in the report, and he felt bound by every principle to resist its adoption. In his conscience he could not give a vote which would transmit to posterity the record of sectional jealousies, of a want of confidence of one part of the state in the other. He was willing, as it regarded his rights or interests in this community, to trust the legislature on subjects exclusively of legislation, but if he professed the same feelings toward the people of the south and the east which they evinced toward the west, he certainly should think it desirable to have the salt tax fixed in the constitution beyond which the legislature could not go, lest they might hereafter be disposed to increase it unreasonably.

He felt no such apprehension. He was willing to trust to the wisdom and discretion and justice of those who come after us.

MR. VAN VECHTEN was disposed to have the pledge received in the constitution. Money had been borrowed upon the pledge of the state, that the duties on salt, and the taxes arising from transportation on the canal, should be appropriated to the extinction of the debt thus incurred. Such a pledge would be binding on individuals, and if so, it was binding upon the legislature, and as they were the representatives of the people, the people must be bound by the acts of the legislature. We are told that this looks like a want of confidence in the people of the west. Are we not all equally bound? This pledge cannot be broken without destroying our government; as individuals could not do it, we cannot do it as a public body. This is a subject in which the people in the western part of the state are deeply interested, and attempts have already been made to modify or exempt the duty on salt. If these attempts have been already made, what may we not expect in future. It will be wise in us, and discreet, to fix this whilst it is within our power, and let the western people know that this pledge must be redeemed.

The question on Mr. Russell's amendment, was thereupon taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Bacon, Baker, Barlow, Breese, Briggs, Buel, Child, D. Clark, R. Clarke, Cramer, Dodge, Dubois, Duer, Dyckman, Edwards, Fairlie, Fish, Frost, Hallock, Hogeboom, Hunt, Hunter, Jay, Jones, Kent, King, Lansing, Lefferts, A. Livingston, P. R. Livingston, Millikin, Moore, Munro, Paulding, Price, Radcliff, Reeve, Rhinelander, Richards, Rockwell, Root, Rose, Sanders, N. Sanford, R. Sandford, Seaman, Sharpe, Sheldon, I. Smith, Starkweather, Steele, I. Sutherland, Sylvester, Tallmadge, Townsend, Tripp, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, A. Webster, Wendover, Wheaton, Woods, Woodward, Yates, Young—69.

AYES—Messrs. Beckwith, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Case, Clyde, Collins, Day, Eastwood, Fenton, Ferris, Howe, Humphrey, Huntington, M'Call, Nelson, Park, Pike, Pumpelly, Rosebrugh, Ross, Russell, Seely, R. Smith, Swift, Taylor, Townley, Van Fleet, E. Webster, Wheeler, Wooster—33.

MR. KING moved to strike out that part of the section which related to lotteries. Carried.

The committee then rose and reported, and the Convention adjourned.

WEDNESDAY, OCTOBER 17, 1821.

The Convention met at the usual hour, when the journals of yesterday were read and approved.

THE LEGISLATIVE DEPARTMENT.

The Convention then again resolved itself into a committee of the whole on the unfinished business of yesterday (the legislative department.)—Mr. Van Buren in the chair.

The question was on so much of the 12th section of the report of the select committee as relates to a constitutional guarantee of the salt duties and tolls, to the completion and reimbursements of the expenditures in relation to the grand canal.

MR. NELSON moved to insert after the word "aforesaid" in the twenty-third line, the following words:

"Nor the duties on goods sold at auction aforesaid, as established by the act of the legislature, passed April 5, 1817, nor the amount of the revenue established by the act of the legislature of March 30, 1820, in lieu of the tax upon steamboat passengers."

Mr. Nelson explained the object of his amendment. He said the select committee had fixed in the constitution the amount of the salt tax, and taken away all legislative discretion as to its reduction. The act of 1819, which imposed the salt tax, and appropriated it to the canal fund, also appropriated to the same object the duty on sales at auction and the steam-boat tax. If it was right and just that the one tax should be fixed in the constitution, it was right that the two others should be so fixed. If the moral integrity of the people of this state required that the salt tax should be pledged in the constitution for the benefit of the canal fund, it also required that the duty on sales at auction and steam-boat revenue should be pledged.

Mr. King referred to the act of the legislature. The duties on salt were specifically enumerated. So the tolls on the canal were pledged, but no rate specified. The report is that the rates shall not be diminished, though they may be increased. The canal commissioners, it is understood, have fixed tolls on the canal at a very low rate, which may probably hereafter be increased. The duties on sales at auction must be graduated by the duties imposed on them by the government of the United States. The government of this state, in case of collision, would probably have to yield, or the business would be transferred to other states where no such constitutional impediment existed. The amount of these duties is in its nature uncertain; and he did not think it possible to define that amount.

The specific revenue intended by the report to be guaranteed, is that which is connected with the expenditure and arising out of it. The steam-boat tax and auction duties were indeed made auxiliary to the carrying on of this great work: but cannot be said to be naturally connected with it.

The commutation of the steam-boat tax was certainly some evidence of the facility with which legislatures may interfere with pledges, however solemnly made, and tended to shew the expediency of a constitutional recognition. These revenues, especially that derived from sales at auction, were precarious, and not considerable in amount. On the whole, he submitted to the committee whether it was expedient so to fix down the duties on sales at auction, as that by the interposition of the general government, all revenue derivable from them may utterly cease.

Mr. Sharpe was in favour of the amendment. He was disposed to gurantee all the pledges that had been made by the legislature. The steam-boat commutation was justified on two grounds. The citizens of other states questioned the constitutionality of taxing them for passing through the state, and should the question be decided unfavourably to the law, all that revenue would be lost for ever. Besides, it was to continue coeval with the exclusive privilege of the steam-boat company, and would secure to the people of this state a certain revenue as long as that monopoly existed.

On the score of economy—it would not be lost sight of, that the commissioners of the canal fund were authorised to borrow two millions of dollars, and will probably be able to borrow at ten per cent. less, than if the fund is left to float upon legislative discretion.

Mr. Ross. I perceive, Mr. Chairman, by the vote taken yesterday, on the amendment submitted by the gentleman from Erie, (Mr. Russell,) that the determination of this Convention is, to fix in the constitution a perpetual duty on salt manufactured in the western district. I regret it, sir, because it throws another obstacle in the way of its adoption. It would be better to be left as we find it, subject to legislative discretion. But gentlemen insist that the duty of one shilling a bushed on salt, and a certain rate of toll, on the canal, shall be fixed by the constitution, because the state has pledged them as a fund for securing the repayment of money borrowed for the purpose of opening and constructing the canals. Then why not adopt the amendment offered by the gentleman from Cortland, (Mr. Nelson,) and take in all the items thus pledged, so as in some small degree, to equalize the burthen. His amendment embraces other duties pledged by the state, with equal solemnity, and for the same objects. According to his amendment, the duties arising from sales at auction, as well as the commutation for the tax on steam boat passengers, have been pledged by law, and ought, therefore, to be secured by constitutional provision, as much as the duty on salt, or tolls on the canal, otherwise you are

certain to create a jealousy between different sections of the state—this it would be well to avoid. The young lion which, it has been said, is now so easily bound, may soon increase in strength sufficient to burst his chains, and be relieved from the unequal operation of duties, by voting a direct tax. The western citizens are willing to be taxed, and to bear a liberal share of the expense incurred by constructing the canal. But they are unwilling to be liable to bear the whole burthen by an unalterable constitutional decree, which has an exclusive operation on them, unless the same rule is adopted which has a like application else where. The western district is not the only part of the state which is to derive benefit from this great work. It will, when finished, be more extensively beneficial to the city of New-York, than any other part of the state. Gentlemen from that quarter ought not to sculk from a proposition to fix in the constitution the duties on sales at auction, and the steam boat commutation, because they have a more immediate effect on them, unless they will consent to exclude the whole from the constitution. But it is contended, that it is less proper to insert these duties in the constitution, because they are laid on private property. The canals and the salt works at Salina are public property, it is true—but are not the works at Montezuma private property? And are you not endeavouring to fix the same duty of one shilling a bushel on all salt manufactured at those works? However it seems to be immaterial whether it be public or private property, on which the duty is laid, so long as its operation is confined to that part of the state. But I hope gentlemen will, at least, be liberal enough to put all the funds provided by law for these objects, on an equal basis. If they must be fixed in the constitution, let them all go together, more especially as those that have their effect here, and to the south, are so trifling, compared with those that have their operation to the west. It has been said that in the western district, we are furnished with salt cheaper than before the duties were laid. I believe this is true. But is it in consequence of the imposition of a duty on that article? I think we shall hardly be persuaded into such a belief. No, sir, the price of every thing has fallen—and salt is very high compared with other articles, and it cannot be purchased with any thing but money. It is true, that it is often sold at a sacrifice, in order to obtain cash to pay the duties. These sales are forced, and it is becoming so difficult to raise money sufficient to satisfy the duties, that the manufacture of salt is diminishing to a very great extent. I am well persuaded, that if the duty was half the amount that is now imposed, the revenue to the state would be full equal to the present amount. When laws were passed pledging those duties, and money was borrowed under those pledges, the creditors of the state had no right to expect that the constitution would be altered at all, and since its being amended does not destroy the validity of contracts or laws passed under the present constitution, they have no claim to alter their indemnity. But, sir, if we are to recognize any part of these contracts, let it be for the whole, by adopting the amendment offered by the gentleman from Cortland, (Mr. Nelson.)

Mr. King moved for a division of the amendment, and the question on the first part thereof being taken thereon by ayes and noes, was decided in the affirmative, as follows:

AYES—Messrs. Bacon, Barlow, Beckwith, Briggs, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, Clyde, Collins, Cramer, Day, Dodge, Duer, Eastwood, Edwards, Fairlie, Fenton, Ferris, Fish, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hurd, Knowles, Lansing, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, President, Price, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rockwell, Rogers, Root, Rose, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Seely, Sharpe, I. Smith, R. Smith, Starkweather, Steele, I. Sutherland, Swift, Sylvester, Tallmadge, Taylor, Townley, Townsend, Tripp, Van Fleet, Van Horne, J. R. Van Rensselaer, Van Vechten, Verbryck, Ward, A. Webster, E. Webster, Wheaton, N. Williams, Woodward, Wooster, Yates, Young—88.

NOES—Messrs. Baker, Breese, R. Clarke, Dubois, Dyckman, Huntington, Jay, Jones, Kent, King, Munro, Paulding, Pitcher, Sanders, Seaman, Sheldon, S. Van Rensselaer, Wendover, Wheeler, Woods—20.

Gen. Root wished to know whether it was intended to include Grand Island, in the Niagara River, which was a part of the consideration for a commutation of the original tax imposed upon steam-boat passengers.

The Chairman then read the act containing the pledge alluded to, and, after some further discussion of the subject, the question was taken on the residue of the amendment relating to the steam-boat commutation, and carried.

Mr. Bacon moved to amend by inserting in the sixth line, after the words "not less," the words "on an average."

Col. Young supported the motion upon the ground that it might hereafter be found necessary to increase the toll on some articles, and diminish it on others.

Gen. Root opposed the motion. The state might be a loser by having the toll lessened on staple commodities, and augmented on posts and rails.

Mr. Brooks moved to insert after the word "paid," in the twenty-fifth line, the following words: "the avails of Grand Island." Lost.

Mr. Nelson moved to insert the following amendment:

"And the amount of the revenue established by the act of the legislature, of March 30, 1820, in lieu of the tax upon steam boat passengers."

Mr. King moved the following further proviso:

"It is further provided, that the salt springs shall not be sold or disposed of to any individual, or body politic or corporate whatever; but the same shall be and remain the property of this state." Carried.

Col. Young moved to insert after the words "salt springs," in the proviso, of the gentleman from Queens, the words "with as much of the lands contiguous thereto as is necessary for the manufacture of salt." Carried.

Mr. Wheeler moved to amend by adding a clause, the purport of which was, that after the reimbursement of the expenses and interest thereon of the grand canal, that the said fund should be inviolably appropriated to the school fund. Lost.

Mr. Ward then moved an amendment similar to that of the gentleman from Washington, (Mr. Wheeler,) except that *a moiety* only of the residuum was to be so appropriated.

Gen. Root would suggest to the gentleman from Westchester (Mr. Ward) the propriety of disposing of the *other moiety* of the residuary fund. He did not like to throw the apple of discord among our descendants, and he feared that posterity would be prodigiously puzzled how to dispose of it.

Mr. M'Call moved to append a proviso, that "the duties on salt should never exceed 12 1-2 cts. per bushel;" no greater sum having been pledged. Lost.

Mr. Brinkerhoff moved to amend the proviso of the gentleman from Queens, by inserting after the word "*salt*," the following words: "nor any of the said canals, nor any section thereof." Carried.

Mr. Van Vechten moved to reconsider the vote on the subject of auction duties.

Messrs. Sharpe and Wheeler opposed, and it was lost.

The question on the whole section, except those parts which relate to the school fund and salt springs, was then before the committee.

Messrs. King and Fairlie expressed their sentiments in the affirmative; and Messrs. Tompkins and Briggs against it.

Mr. N. Williams observed, that he rose with reluctance to give his reasons for voting, as he felt bound to do, against the whole section under consideration, though he might not, from necessary absence for a few days during the debate, fully understand the subject.

The whole proposition was founded in a principle which he could never agree to; and indeed, if adopted, it would reflect disgrace, not only upon the members of this Convention, but upon their children and their posterity in all future time. They are to be, in all probability, the future legislators of the state, and

will not fail to find the names of their fathers recorded as the authors of an act, by which we announce to all future generations, that their representatives are not safely to be trusted. What are we telling the people? Nothing short of this: that we, the delegates to a Convention, which they have created for the purpose of making amendments to the constitution, comprehend all the virtue, foresight, and wisdom that is, and is to be, for ever hereafter. And unless we perpetuate in the constitution, this tax or duty on salt, which is already secured by an existing law of the state, we have so little confidence in those who are to come after us, and who will be empowered by the people to legislate in all other cases, that we apprehend they will violate a solemn pledge, as it is called, to the public creditor. That is, we suspect that the people and their legislature will hereafter violate all good policy and common honesty. He said, he could never consent to make a constitution upon such principles. That this was a pledge might be admitted; and if so, he had no doubt that it would faithfully be redeemed. Had any alarm been uttered by any public creditor? He trusted not.

But, he said, his principal objections to this amendment were, that the Convention were going too much into legislative detail, and that of the most odious kind; for it was founded in distrust.

By so much legislation, the constitution would spread before the people a large surface for objections. So many points would be presented, that the whole would be endangered. One section of country would oppose one part while another section would be equally hostile to another part, and thus all would be lost. The people did not send us here to legislate. They could not have expected that we would do more than to settle general principles of government. They expected that we would leave the business of legislation to other hands.

He had said, he observed, that what they were doing was founded in distrust. And he was sorry to see that it could not be concealed, that there was a want of confidence in the western people of this state. Would the Convention present to that people a constitution founded in a suspicion of their integrity? He did not know what had occurred to excite this suspicion, or any feeling of jealousy against the people of that section of the country. It would be allowed on all hands, that he ought to know something of their history, their character, and their feelings; and he would boldly say, that there was nothing in either that should excite any alarm. Whatever was founded in a system of distrust could not prevail. It was calculated to set brother against brother; for we were all brethren of one great family. He hoped gentlemen would pause and reflect before they would sanction such a proceeding; by which they were raising up a structure that would carry within its bosom the materials of its own destruction. Let us not record, in the most solemn act we shall ever perform, that we have no confidence in a great and respectable body of our fellow citizens.

But he could not, he said, go fully into the argument, as he had, unfortunately, not heard what was urged in favour of the measure. He thought it, however, his duty to offer some of the grounds which would compel him to vote against it.

Mr. Bacon said, that having, in the course of debate yesterday, and by his vote on an amendment which had been proposed, involved himself in the disgrace which had just been attached, by his colleague, to all those who might see fit to sanction the principle of the section under consideration, and being, by the vote which he should give, about to plunge himself still deeper in that disgrace, he felt himself called upon, by the remarks of the gentleman, to offer something further in justification of the course which he should pursue. He needed not, as he hoped, the solemn admonition which he had heard, that his vote was to be placed on the records of his country, for the future inspection both of the constituents whom he represented, and of his posterity. He trusted that all his votes were given, not only under a sense of those considerations, but also under that which related to his own consciousness of truth and justice.

The gentleman has set himself up as the great advocate of the western people, and the vindicator of their high character for integrity and good faith. He had certainly said, or done, nothing to disparage or detract from that character; he claimed only, that they were like all other people in the same situation, acting under views of their own interest, liable at times to improper and unreasonable excitements, and there was nothing in the proposition before them which implied any thing more. It was said to be founded entirely on a distrust of the people, and a supposition that they might at some future time, abuse their own power; it was, however, no more so than every other restraint engrafted upon constitutions and governments. These were all founded on a distrust for human nature; and government in general had been well and properly said to be but a standing libel on man. He had yesterday stated frankly the general motives which influenced him in relation to this question, and would now repeat them; they were such as still entirely reconciled to his own mind the course which he should pursue.

To the warning which he had heard as to the effect which this provision may have on the adoption of the other amendments which may be laid before the people, it was sufficient to say, that he could not speculate on any contingencies of that sort; "be just, and fear not," was the safest rule for us to pursue; and having done our own duty, according to our best understanding, we should be content to leave the issue to the good sense of the people. The remark, however, had one important bearing, which ought not to be lost sight of, which was, to inculcate the propriety of proposing all our amendments in distinct and separate articles, to be severally accepted or rejected by the people, as they may see fit; by which course, all the apprehended hazard will easily be avoided.

As to the popular excitements, divisions, and turmoils on this subject, with which we were threatened by his colleague to day, and the rising in arms against this provision, which was alluded to yesterday, he could only say, that as he now held nothing from public favour, of which, either by arms or excitements, he could be deprived, so he was sure that there was nothing to which he aspired from that favour, from which he could, by the same weapons be debarred.

The question was then taken on the second division of the section, by ayes and noes, and carried in the affirmative, as follows:

AYES—Messrs. Bacon, Baker, Barlow, Breese, Buel, Child, D. Clark, R. Clarke, Clyde, Cramer, Dodge, Dubois, Duer, Dyckman, Edwards, Fairlie, Fish, Frost, Hallock, Hogeboom, Hunt, Jay, Jones, Kent, King, Lansing, Lefferts, A. Livingston, P. R. Livingston, Millikin, Moore, Munro, Paulding, Pitcher, Radcliff, Reeve, Rhinelander, Richards, Rockwell, Root, Rose, Sage, Sanders, N. Sanford, R. Sandford, Sharpe, Sheldon, I. Smith, Starkweather, Steele, I. Sutherland, Sylvester, Tallmadge, Townsend, Tripp, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, Woods, Woodward, Yates, Young—67.

NOES—Messrs. Beckwith, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Case, Collins, Day, Fenton, Ferris, Howe, Humphrey, Huntington, Hurd, Knowles, M'Call, Nelson, Park, Pike, President, Price, Pumpelly, Rogers, Rosebrugh, Ross, Russell, Seely, R. Smith, Swift, Taylor, Townley, Van Fleet, A. Webster, Wheeler, N. Williams, Wooster—39.

The blank in the amendment was then so filled as to read "*three* dollars."

Mr. Ross's resolution, heretofore offered relative to imprisonment for debt, was read, and the question being put, it was lost.

The resolutions offered by Mr. Wheaton, and referred to this committee, were, on motion, postponed until to-morrow.

The report of the select committee on the bill of rights, which had received a similar reference, being next in order,

Mr. Tompkins moved to postpone until to-morrow the further considerrtion of the subject, to the end that it might be hereafter referred to the committee to be appointed to consolidate, collect, and arrange the various parts of the amended constitution.

After some discussion of the subject, in which Messrs. Tompkins, Sharpe, Tallmadge, Root, and Briggs took part, the motion for postponement prevailed.

The report of the select committee, of which Mr. Radcliff was chairman, was then taken up.

The first subject presented, was contained in the second section relative to the prohibition of the grant of lotteries, and the sale of lottery tickets.

Mr. Radcliff expressed the views of the committee, and set forth at large the evils arising from granting them.

Mr. Buel asked for a division of the section.

Col. Young was desirous to insert a prohibitory provision in the constitution if it could be rendered effectual. But he was apprehensive that tickets from other states, and from the city of Washington, under the authority of the general government, would be poured in upon us, and that we should lose the revenue, without an exemption from the evils that attend them.

Mr. Edwards stated the decision of the supreme court of the United States in the case relative to the sale of the tickets of the lottery granted by the District of Columbia. He then proceeded to point out the pernicious effects of lotteries, especially in the city of New-York. He averred that it was a legalized system of gambling, and of so pernicious a character as to extend itself into every class of society, from the highest to the lowest, and that its tendency, like all other gambling, was to destroy industry and economy. That it had been frequently animadverted upon by benevolent societies as a fruitful source of pauperism. That it was the very worst mode which could be resorted to for the purpose of raising a revenue, as but a very small portion of the money extracted in various ways from the people, ever found its way into the public treasury; and concluded by expressing his earnest desire that a constitutional prohibition must be adopted for the purpose of putting an effectual stop to them?

Mr. Wheaton said he merely rose to state the substance and effect of the decision of the supreme court of the United States, which had been alluded to in the debate. In the famous case of Cohens against the state of Virginia, that court had determined that the tickets in a lottery established by the corporation of the city of Washington, under an act of congress, authorising them to establish lotteries for local purposes, and no provision being contained in the act directing their sale any where out of the district of Columbia, could not be sold in those states where the local laws prohibited the sale of lottery tickets. Still the court were of the opinion, that congress might, in the exercise of its powers as the supreme legislature of the union, establish lotteries for revenue purposes, or any other national object within the sphere of the general powers of the federal government, and compel the sale of the tickets throughout the country, notwithstanding the state laws to the contrary. He did not believe, however, that congress would ever resort to a source of revenue so corrupting and demoralizing in its effects, and the power of this state to prohibit the sale of lottery tickets from other states was unquestioned. He therefore hoped that the clause would be adopted as proposed by the select committee.

The section was further supported by Messrs. Sharpe, Radcliff, Jay, and Hogeboom, and opposed by Messrs. Young, Livingston and Tallmadge; when

Chancellor Kent moved to amend the section by inserting after the word "*state*," the words, "unless the law authorizing the same receives the assent of two-thirds of the members present in each house of the legislature." Lost.

The question was then taken on the first clause in the section by ayes and noes, and carried in the affirmative as follows:

AYES.—Messrs. Bacon, Briggs, Brooks, Buel, Burroughs, Carpenter, Child, R. Clarke, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fish, Frost, Hogeboom, Humphrey, Hunter, Huntington, Jay, Lansing, M'Call, Millikin, Moore, Munro, Park, Paulding, Pitcher, President, Radcliff, Reeve, Rhinelander, Rogers, Root, Ross, Russell, Sage, N. Sanford, Sharp, R. Smith, Starkweather, I. Sutherland, Sylvester, Townsend, Tripp, J. R. Van Rensselaer, S. Van Rensselaer, Verbryck, Ward, Wendover, Wheaton, Wooster—53.

NOES.—Messrs. Baker, Barlow, Breese, Brinkerhoff, D. Clark, Collins, Day, Fairlie, Ferris, Hallock, Howe, Hunt, Hurd, Jones, Kent, King, Knowles, Lefferts, A. Livingston, P. R. Livingston, Nelson, Pike, Price, Pumpelly, Richards, Rockwell, Sanders, R. Sandford, Seaman, Seely, Sheldon, I. Smith, Steele, Swift, Tallmadge, Taylor, Van Fleet, Van Horne, Van Vechten, A.

Webster, E. Webster, Wheeler, N. Williams, Woods, Woodward, Yates, Young, —47.

The residue of the section was then carried without a division.

The third section passed—*nem. con.*

The fourth section was read, and that part thereof which relates to the abolition of the fortieth article of the constitution was carried.

On the substitute therefor,

Mr. Radcliff explained the views of the committee.

Gen. Root observed, that this was a subject with which he was not unacquainted. The Quakers originally were the only persons in contemplation to be entitled to exemption. It was afterwards extended to Shakers, and finally to others. The winter before last, a law was made to exempt them without an equivalent. It was on the eve of a gubernatorial election, and the attempt was made to buy them with a price. They got the price, but never restored the equivalent. The way in which the constitution was got along with, will be well recollected. It was provided by that instrument that if they should not perform militia duty they should pay an equivalent. The question then was, what was an equivalent? It was said that a Quaker's service was of no value—if he went into the field he would not fight—and therefore that a Quaker's equivalent was *nothing at all?* That was the argument, and the election succeeded to admiration. The consequence is, that the state is overrun with Quakers—both *wet* and *dry*. Mr. R. wished so to amend the constitution, as to bring them up to the work. He would place them all on the same muster roll. The expression in the report of the committee was so broad as to include such as held it "*unlawful to bear arms.*" A few years ago this would have included a great portion of the state—a great *peace-party* who held it "unlawful to bear arms" in their country's defence, or to cross the lines to oppose an enemy. He believed the committee did not intend to carry it so far. He therefore moved to strike out all that part of the substitute proposed by the select committee, after the word "*service,*" in the 6th line thereof, and to insert in lieu thereof the following:

"But that all such of the inhabitants of this state, of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, shall be excused therefrom by paying to the state an equivalent in money; and the legislature shall provide by law for the collection of such equivalent, to be estimated according to the expense in time, money, and equipments of an ordinary able-bodied militiaman."

After a few remarks by Mr. Jay, the question was taken thereon, and carried without a division.

The section as amended was then passed.

On the 5th section, Mr. Radcliff explained the views of the committee, when the question was taken on the section as reported, and carried.

Gen. Root moved to add to the section as just passed, or as a distinct section, the following:

"The judiciary shall not declare any particular religion, to be the law of the land; nor exclude any witness on account of his religious faith."

The supreme court, as Mr. Root contended, had brought into this state the common law of England, in defiance of what he (Mr. R.) considered to be the constitution of the state. Indictments had been sustained for blasphemy—particularly in the county of Herkimer, and in the county of Washington, as contained in Johnson's Reports. In the latter case it had been declared that Christianity was a part of the law of the land—and this was borrowed from the common law of England. The common law of that country was established during the prevalence of the Roman Catholic religion. It was then that they issued writs *de heretico comburendo*—and this was the law that had been introduced into this state. If this was correct, punishment for blasphemy should now be inflicted on such as would not acknowledge the supremacy of the mother church, and on those who should ridicule the eating of wafers, or the doctrine of transubstantiation.

With respect to the part of the amendment relative to the exclusion of witnesses, he would observe—that when brought forward they were to be interrogated and catechised as to their articles of faith. If it was not held to be correct, they were excluded. This was calculated to produce falsehood and hypocrisy. Indeed if suffered to prevail, hypocrisy and lies would become the chief qualifications for a witness. And yet in a city, large enough in its population for a state, you have a Jew for a sheriff. As the law now is, he is guilty of blasphemy every time he enters the synagogue. Suppose a Musselman reads the Koran for his edification; he is guilty of blasphemy! He wished for freedom of conscience. Where that existed, true religion would flourish. But where such punishments were inflicted, commiseration would be excited for the accused, and execration for the ministers of the law. If judges undertake to support religion by the arm of the law, it will be brought into abhorrence and contempt.

Chancellor Kent said that the gentleman from Delaware (Mr. Root) had not stated correctly the decision of the supreme court which he arraigned. The court had never declared or adjudged that christianity was a religion established by law. They had only decided that to revile the author of christianity in a blasphemous manner, and with a malicious intent, was an offence against public morals, and indictable. The case to which the gentleman referred, arose in the county of Washington, in 1811. A person was indicted in that county for having uttered in a wanton manner, and with a malicious disposition, in the presence and hearing of divers people, that *Jesus Christ was a bastard and his mother a whore.* He was found guilty by a jury at the Oyer and Terminer, and the cause was removed into the supreme court, and the question submitted to the court was, whether the uttering of these words, in the manner and with the intent and disposition charged, was not a misdemeanor? He had the honour at that time to be chief justice of that court; and after argument and consideration, the court, consisting besides himself of judges Thompson, Spencer, Van Ness, and Yates, unanimously decided that the indictment was good, and the conviction valid in law.

This is the true state of the case. The court considered those blasphemous words, uttered with such an intent, as a breach of public morals, and an offence against public decency. They were indictable on the same principle as the act of wantonly going naked, or committing impure and indecent acts in the public streets. It was not because christianity was established by law, but because christianity was in fact the religion of this country, the rule of our faith and practice, and the basis of the public morals. Such blasphemy was an outrage upon public decorum, and if sanctioned by our tribunals would shock the moral sense of the country, and degrade our character as a christian people.

The authors of our constitution never meant to extirpate christianity, more than they meant to extirpate public decency. It is in a degree recognized by the statute for the observance of the Lord's Day, and for the mode of administering oaths. The reasons of the judgment are in print, and before the public, and to them he referred. The court never intended to interfere with any religious creeds or sects, or with religious discussions. They meant to preserve, so far as it came within their cognizance, the morals of the country, which rested on christianity as the foundation. They meant to apply the principles of common law against blasphemy, which they did not believe the constitution ever meant to abolish. Are we not a christian people? Do not ninety-nine hundredths of our fellow citizens hold the general truths of the Bible to be dear and sacred? To attack them with ribaldry and malice, in the presence of those very believers, must, and ought, to be a serious public offence. It disturbs, and annoys, and offends, and shocks, and corrupts the public taste. The common law, as applied to correct such profanity, is the application of common reason and natural justice to the security of the peace and good order of society.

The supreme court is likewise charged by the gentleman from Delaware, (Mr. Root,) with rejecting the testimony of witnesses who had no religious belief. I do not know to what case the gentleman alludes. The act concerning oaths contained the only test or belief ever required of a witness, which was,

that he believed in the *existence of a supreme being, and a future state of rewards and punishments.* He was persuaded that the court had never gone further in their inquiries of a witness. He had no knowledge of any case calling for such animadversion. This was all that the courts had done, as far as he knew, to check atheists and blasphemers: and could this Convention possibly think that the gentleman's amendment to the constitution was wanting to give them further protection? We should endanger the security of life, liberty, and property, and the comfort and happiness of our families.

Mr. Tompkins was satisfied that the gentleman from Delaware had misapprehended the decision of the court. They had never undertaken to uphold, by the authority of law, any particular sect; but they had interposed, and rightfully interposed, as the guardians of the public morals, to suppress those outrages on public opinion and public feeling, which would otherwise reduce the community to a state of barbarism, corrupt its purity, and debase the mind. Mr. T. was not on the bench at the time the decision alluded to took place, but he fully accorded in the opinions that were advanced; and he could not hear the calumnies that had gone forth against the judiciary on that subject, without regret and reprobation. No man of generous mind—no man who regarded public sentiment, or that delicacy of feeling, which lies at the foundation of moral purity, could defend such an outrage on public morals, or say that the decision was unmerited or unjust. If a man were to go naked in the streets, he might claim his right to do so, by the law of nature; but every man who had a suitable regard to decency or morals, would rejoice in bringing him to punishment.

Gen. Root then read the case referred to.

Mr. Briggs supported the amendment, which was opposed by Mr. Young;—when the usual hour of adjournment having passed, the committee rose and reported, and the Convention adjourned.

THURSDAY, OCTOBER 18, 1821.

Prayer by the Rev. Dr. Chester.

The President took the chair at the usual hour, and the journals of yesterday were read and approved.

THE LEGISLATIVE DEPARTMENT.

The Convention resolved itself into a committee of the whole on the unfinished business of yesterday—Mr. Van Buren in the chair.

The amendment offered yesterday by Mr. Root was withdrawn, and another offered, omitting part of the first, and altering the phraseology of the other part, to read as follows: "It shall not be declared or adjudged that any particular religion is the law of the land."

The question was taken thereon without debate, and decided in the affirmative, as follows:

AYES—Messrs. Barlow, Briggs, Brinkerhoff, Carpenter, Carver, Case, D. Clark, Collins, Cramer, Day, Dodge, Dubois, Dyckman, Eastwood, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Jones, Kent, Lansing, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, President, Price, Pumpelly, Reeve, Richards, Root, Rose, Rosebrugh, Ross, N. Sanford, Schenck, Seaman, Seely, Sharpe, Sheldon, I. Smith, Steele, Swift, Tallmadge, Taylor, Townley, Tripp, Van Fleet, Van Horne, Verbryck, Ward, A. Webster, E. Webster, Wheeler, Wooster, Yates, Young—62.

NOES—Messrs. Bacon, Beckwith, Breese, Buel, Burroughs, Child, Clyde, Duer, Fish, Hees, Hunter, Huntington, Hurd, Jay, Lefferts, Pitcher, Rhinelander, Rogers, Russell, R. Smith, I. Sutherland, Sylvester, J. R. Van Rensselaer, S. Van Rensselaer, Wendover, Wheeler—26.

Chancellor Kent assigned the reasons, which induced him to vote in favour of the amendment. It was perfectly harmless, and might be a security. No judge would think of making any particular religion a part of the law of the land. He repeated that if he were to decide to-morrow, in a case similar to the one referred to by the gentleman from Delaware, he should give such a decision as had been read in debate yesterday.

Gen. Root offered the following amendment, that "no witness shall be questioned as to his religious faith."

Col. Young said if by religious faith, were meant a belief in a Supreme Being, and in future rewards and punishments, he should oppose it. The testimony of the atheist and infidel, ought not to be placed upon an equality with others, as he could feel no responsibility.

Chancellor Kent fully concurred in the sentiments of the gentleman from Saratoga, (Mr. Young.) Why should a witness be sworn on a book in which he did not believe—in the name of the ever living God, in whose existence he had no faith—with reference to a future retribution, which he treated as a dream? What was the testimony of such a witness worth? The oath was mockery, and the evidence ought not to be admitted.

Mr. Briggs was in favour of the amendment, and replied to the gentleman from Albany, (Mr. Kent.) It was impossible to ascertain who were atheists, and who not. In this age of light and knowledge, he regretted to see such narrow views entertained; we should be above such prejudices, and act on the broad principles of liberty.

Gen. Root said his object in offering this amendment, was, in some measure, to purify the morals of the people, and the incorrect practice of our courts. He was anxious to adopt some plan by which they might be prohibited from making men hypocrites and liars. This was a kind of judicial farce, which had been played off upon mankind long enough; that a jury should be told that this or that man is not to be believed, because he does not think as they may believe, with regard to future rewards and punishments. By this method, men of veracity are frequently rejected, and the man who has no scruples against swearing to the prejudice of his neighbour, being prepared to answer the questions, which may be put to him, is considered a good witness. Thus a man who has no religion at all, who feels not the force of any moral obligation, will make a good witness in our courts; but if he feels a regard for truth, and has a sense of his responsibility to his great Creator and Redeemer, then he must be rejected. He must agree to some particular tenets, otherwise he is excluded from being a witness, or the jury are informed, that he is an incredible witness, and his testimony is not to be believed. When a man is questioned by a court as to his belief, if he comes with a lie in his mouth, he will not hesitate to answer in such a manner as will entitle him to the privilege of testifying; and he may then proceed to swear his neighbour out of his life, liberty, and property. Mr. R. said he had heard of atheists, but he had never seen any, and he did not believe he ever should; and if there were such men, he should not consider it a wise or certain test to take their own word for it;—it should be determined by some person other than the one suspected. If a man is questioned, whether he believes in a Supreme Being, he will always answer in the affirmative. Ask him whether he believes in a state of future rewards and punishments, his answer is, yes,; if he is a Universalist, he will say he believes there has been a great atonement made for all men. Then he is excluded as not being competent to tell the truth: but if he is an unprincipled fellow, who has no regard for any moral obligation whatever, he has only to answer yes, to these judicial interrogations, and he becomes a good witness. It was enough to fill one with horror, to see a child catechised in a court of justice, as was the practice; if he has learnt at school, so that he can repeat the catechism arranged by the assembly of divines at Westminster, he is then prepared to swear just as he has been instructed to swear. Mr. Root remarked, that a paper had been put into his hand the morning before, relating the circumstances attending a trial at a circuit in this state, which were as follows:—A witness was first asked if he believed in a Supreme Being, to which he answered in the affirmative. The next question was, whether he believed the

Bible was the work of inspiration; his reply was, that he did not know that it was any more so than any other book. The jury were charged to lay aside his testimony, and the party was thereby deprived of this evidence, which would have been admitted as good, if he had only been a hypocrite or a liar.

Mr. Root wished that all men might be religious; but not hypocrites and liars, for there was enough of them in all conscience.

The Chancellor made a few remarks, in which he treated the language of the gentleman from Delaware, in relation to the judiciary, as unworthy of notice. The anonymous calumnies of a newspaper had been cited as authority; and such slanders he should not be at the trouble to refute.

The question on the motion of Gen. Root, was then taken by ayes and noes, and decided in the negative as follows:

NOES—Messrs. Bacon, Beckwith, Breese, Brinkerhoff, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Hunt, Hunter, Huntington, Hurd, Jay, Jones, Kent, King, Knowles, Lansing, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Paulding, Pike, Pitcher, President, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rogers, Rose, Rosebrugh, Ross, Russell, Sage, Sanders, N. Sanford, Seaman, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Starkweather, Steele, I. Sutherland, Swift, Sylvester, Tallmadge, Taylor, Townley, Townsend, Tripp, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, A. Webster, E. Webster, Wendover, Wheaton, Wheeler, N. Williams, Wooster, Yates, Young—94.

AYES.—Messrs. Briggs, Howe, Humphrey, Park, Price, Root, Schenck, Van Fleet.—8.

Mr. Radcliff moved to strike out "ministry," and to insert the words, "minister of the gospel." Carried.

The section, as amended, was then adopted.

The sixth section, relative to the creation of new counties, was then read.

Mr. Radcliff, Chairman of the committee, explained.

Mr. Dodge was opposed to it: he thought it should be left to the legislature.

Mr. Jay, from the committee, made a few explanatory remarks, when the question on the section was taken and lost.

The seventh section was read, and passed as reported.

The question, next in order, was stated to be the amendment of Mr. Bacon on the subject of senatorial districts.

Mr. Bacon proposed two modifications of his amendment, which were as follows:

In the second section of the report, strike out "seventeen," in the first line, and insert "as many districts as there are senators;" and strike out the rest of the section after the word, "districts," in the second line, and insert, so that the whole section will read as follows:

That the state shall be divided into as many districts as there are senators to be elected. That each district shall elect one senator, except that the county of New-York, together with the counties of Kings and Richmond, compose one district, and elect three senators, shall be composed of contiguous territory, and shall conform as near as may be to county lines, and be laid off, and the senators apportioned by the present legislature at their next session, according to the number of free inhabitants, excluding aliens persons of colour not taxed, paupers, and convicts, in each district, which apportionment shall continue until a census of the inhabitants of the state shall be taken, as hereinafter directed, unless altered by the first legislature which shall be elected after such apportionment, who may if they see cause, alter such districts, and re-apportion the senators on the principles herein before provided for, and such last mentioned apportionment shall then continue until the next census."

Mr. Duer said, there were fewer objections to the plan proposed by the gentleman from Columbia (Mr. Williams) than he had supposed, before he had

given it a more thorough examination. He, however, believed, that a multiplication of districts would diminish the importance of the senate. We were, in his opinion, carrying our innovations too far; and if we went on in this way, we should jeopardize the whole of the amendments, and form a constitution which would be rejected by the people. He replied to the arguments that had been advanced in favour of a subdivision and multiplication of districts. He was opposed to the amendment offered by the gentleman from Oneida, (Mr. Bacon,) and in favour of that proposed by Mr. Tallmadge, which he wished might be referred to a select committee.

Gen. Tallmadge feared, that the Convention was spreading its labours too wide; but he was warranted in the belief, that a different arrangement of senatorial districts was among the alterations anticipated by the people, and which would meet their approbation, if a plan could be devised, in which there were less evils than in the one contained in our present constitution. This being correct, we have only to proceed in our deliberations, and produce the plan which we shall consider best adapted to the principles of our government and the happiness of the people. With these considerations to guide him, he hoped he should be indulged in making a few remarks upon this subject.

The report of the select committee, together with the amendment offered by the gentleman from Oneida, (Mr. Bacon,) had both been laid before the Convention; and likewise the proposition of the gentleman from Columbia, (Mr. E. Williams) applicabe to the plan suggested by the gentleman from Oneida. He would proceed to examine these two plans, and contrast them before the committee, that they might be the better prepared to judge of their relative merits or demerits. He had no hesitation to say, that he had once been predisposed in favour of thirty-two districts; but on an investigation of the subject, he was satisfied that it was impracticable to accomplish it consistently with the principles of equal representation, and it was inconsistent with the true spirit of our government, from which he felt himself bound not to depart.

He, therefore, felt it a duty to oppose the report of the committee, as not being calculated to effect the great object for which they were striving—to bring home the elected to a knowledge of the elector. His mind was fixed upon eight districts. Let us, in the first place, examine the report of the committee, that we may know the grounds upon which it ought to be rejected, if rejected at all; and here it would be no more than justice to remark, that to the committee who made this report no imputation of carelessness or inattention could be alleged: their works proved to the contrary. A preliminary objection to this report was, that there would not be, upon the plan recommended, an equal representation in each and every district. Contrast the following districts:—

2	district,	New-York, Richmond,	10,578 minus.
4	:	Putnam, Dutchess, Columbia,	8,955 plus.
			=19,533 inequal.
2			10,578—
5	:	Greene, Delaware, Otsego,	9,967+
			=20,545 inequal.
4			8,955+
6	:	Albany, Schenectady, Schoharie,	11,179—
			=20,137 inequal.
5			9,967+
6			11,179—
			=21,146 inequal.

6 :		11,179—
15 :	Ontario	
:	Steuben,	9,525
:	Allegany,	
		=20,704 inequal.

Mr. T. said he would next call the attention of the committee to the detail submitted by the gentleman from Columbia, to the amendment offered by the gentleman from Oneida. This plan is to divide the state into thirty-two districts, and we have been told that this could be effected without much difficulty or injustice. What is the result? A constant division of towns and counties, which to him appeared inadmissible. It had been urged as a reason for the propriety of dividing counties, that it was frequently done in making congressional districts. There could be no soundness in this argument, for the representatives in congress stand the same with respect to their individual states, as the members of our assembly do with respect to their particular counties. They all act from one interest, coming from the same portion of the Union, and all having the same general object in view, the good of their state. The questions that arise, then, are of a national character, in which they all feel a common interest. The case is different in our legislature, where the members have all local interests, and local wishes to be gratified. If a county or town is to be divided, it affects the immediate objects of individuals, who have rival interests growing out of village jealousies, market privileges, county cites, &c. If some towns of one county were annexed to another county, to compose a senator district, it would thus often happen, that the representative of the single district thus composed, would oppose the very wishes of those towns annexed to a county with which they had no alliance. This was sufficient to show the impropriety of dividing counties, and setting off towns. It was not necessary to go into a detail on this subject, as a bare mention of the facts would be sufficient to convince any man who would reflect on them.

He would next call the attention of the committee to the plan proposed by the gentleman from Columbia, by contrasting the different districts, to show the inequality of representation, which must be produced by this method of making single districts.

7 district,	Columbia,	4,798 minus.
8 :	Greene,	6,859 plus.
	Delaware,	
		=11,657 inequal.
4 :	Orange,	
	Rockland,	6,914+
11 :	Schenectady,	6,527—
	Schoharie,	
		=13,441 inequal.
18 :	Herkimer,	10,744—
19 :	Oneida,	7,499
		=18,243
19 :		7,499+
23 :	Broome,	9,241—
	Tioga,	
		=16,710
18 :	Herkimer,	10,744—
26 :	Ontario,	18,775+
		=29,519

Is not this sufficient to induce us to abandon a plan which produces such results? The inequalities produced by this plan, are double to those produced by the report of the committee; and as we have now fifty-two counties in the state, it becomes necessary to unite counties to form these single districts. Look at the districts composed of the counties of Madison and Oswego, between which there is no earthly connection, being separated by the Oneida Lake, which cuts off all social intercourse, and leaves the inhabitants of the different counties strangers to each other. Thus the object of small districts is totally de-

feated, and the inadmissibility of the plan satisfactorily demonstrated. It is totally contrary to the genius of our government, and incompatible with the principles upon which it was founded, and with the prosperity and happiness of the people who compose it. We confound the nature of the senate and assembly, and lay a foundation for continual discord between the two branches, and where this evil will end it is difficult to predict. The true spirit of our government requires, that the popular branch of our legislature present the interests and feelings of their constituents in detail, and that the senate stand as the umpire, to pronounce upon the interest of a large district; but if they are elected in small districts, their views will be more limited, and they will lose that independence and elevated rank which they ought to maintain in the legislature, and descend to the little local views, which will always agitate the more popular branch. This, then, is a subject of vital importance, and one upon which must, in a great measure, depend, the future prosperity of our government. Let us, then, endeavour to preserve the regular gradation of the different departments of our government. Let the local and individual views of the people be concentrated in the assembly, narrowed in the senate, and terminated in the executive. We shall then have a fair representation of all the varying interests of the state, from local to general and state interests.

From this view of the subject, he had thought it a duty to submit to the consideration of this committee, a plan for dividing the state into eight districts, by which it would be seen, that the object of equal representation, without the evil of dividing counties, might be effected more nearly than by any plan heretofore proposed. The greatest inequality would be a deficiency in the western part of the state of about 9,000, which would soon be made up by the rapid increase of population in that part of the state.

Free white inhabitants in the state,	1,332,744
Deduct aliens,	15,101
	1,317,643

Divided by 32, the whole number of senators, gives 41,176, for each senator, and four senators require 164,705.

DISTRICT No. I.

Suffolk,	22,429
Queens,	18,260
Kings,	9,180
Richmond,	5,520
New-York,	107,430
	162,758
minus,	1,948
	164,705

DISTRICT No. II.

Westchester,	30,525
Putnam,	11,014
Rockland,	8,246
Orange,	38,944
Dutchess,	43,910
Ulster,	28,709
Sullivan,	8,559
	169,907
plus,	5,202
	164,705

DISTRICT No. III.

Greene,	22,144
Columbia,	36,383
Albany,	36,524
Rensselaer,	38,834
Schoharie,	22,523
Schenectady,	12,126
	168,584
plus,	3,879
	164,705

DISTRICT No. IV.

Saratoga,	35,167
Montgomery,	36,548
Hamilton,	1,243
Washington,	38,194
Warren,	9,327
Clinton,	11,011
Essex,	12,591
Franklin,	4,244
St. Lawrence,	15,025
	163,350
minus,	1,355
	164,705

DISTRICT No. V.

Herkimer,	30,432
Oneida,	49,675
Madison,	31,949
Oswego,	12,211

Lewis,	9,960
Jefferson,	32,025
	165,352
plus,	647
	164,705

DISTRICT No. VI.

Delaware,	25,891
Otsego,	44,284
Chenango,	31,007
Broome,	14,204
Cortland,	16,435
Tompkins,	20,589
Tioga,	16,776
	169,186
plus,	4,481
	164,705

DISTRICT No. VII.

Onondaga,	41,123
Cayuga,	38,447
Seneca,	23,318
Ontario,	60,616
	163,504
minus,	1,201
	164,705

DISTRICT No. VIII.

Steuben,	21,658
Livingston,	18,253
Monroe,	26,553
Genesee,	39,788
Niagara and Erie,	22,838
Allegany,	9,271
Cattaraugus,	4,084
Chautauque,	12,555
	155,000
minus,	9,705
	164,705

By this plan I demonstrate the practicability of approximating very nearly to an equal representation, without resorting to the gerrymandering system. The counties composing each district are contiguous, and by their relative position, calculated to bring as great an unity of interests and feelings together, as the magnitude of the districts could by any other arrangement admit. He would not be understood as saying, that this plan was perfectly correct, but that it was as nearly so as the circumstances and nature of the case would allow. We have been again referred to the numbers of the Federalist, to show that a dissimilarity of the genius of the two branches of the legislature is required in forming a well balanced government. It was cited in a former debate in support of the freehold distinction in the qualification of the electors—but such was not the object of the author. It was to demonstrate the propriety of having the different branches of the legislature represent different feelings and interests, and thus to secure in them a dissimilarity of character, and provide the one as a check upon the other. The constitution of the United States furnished a happy illustration of this principle. The house of representatives were the immediate delegates from the people, and chosen by them for the term of two years, and expressly to represent the local feelings and interests of the people. The senate was composed of persons chosen for six years; not by the people of the states, but by the legislatures of the several states, and elected expressly to represent the state sovereignties—to guard state rights, and prevent a consolidation of the Union. A perfect harmony was thus produced in the system of our government, and its several branches and different interests were protected and made safe in its every diversity of character. The same principle had been wisely adopted in the formation of our state government, and to create this diversity of character in the two branches, the assembly was elected by the counties, and the senate by districts, composed of several counties. The one representing local views, and the rival interests of contiguous villages, or adjoining counties, produced constant collisions between the representatives of counties, while the senators, coming from larger districts, presided over the common good, and harmonized conflicting feelings, and moderated rival contentions. This important principle ought not to be departed from, and its consideration had induced him to adopt the plan which he had submitted, to divide the state into eight districts of equal population and contiguous counties. This plan gave another important and essential benefit.—It allowed four senators to each district, to hold for the term of four years. Thus an annual election of one senator from each district was provided. Upon this plan one quarter of the senate is changed annually, and the feeling and common sentiment of the people is thus continually and gradually, and yet so tem-

perately, introduced into the body of the senate, as to give to it great stability of character, while it is properly affected by public feeling.

Mr. E. Williams had flattered himself, when the proposition of the gentleman from Oneida (Mr. Bacon) was presented, that if it could be demonstrated that the state could be divided into single districts, without the cutting up of counties, or great inequalities in population, that it would have received the support of the honourable gentlemen (Messrs. Duer and Tallmadge) who now opposed it. The principle seemed to have been acquiesced in on all sides of the house, and the practicability of its application appeared to be the only difficulty to surmount. But it seems that subsequent reflection has convinced those gentlemen, that their pre-conceived opinions were erroneous. But as he (Mr. W.) had not learned until this morning, the reasons which had operated to produce that change, it could not be expected that his mind should be immediately affected by them; and he should, therefore, be permitted to retain the sentiments which he had previously expressed.

The honourable gentleman from Orange (Mr. Duer) utterly disclaimed all party considerations; although he contended that the statement which I had the honour of submitting to the committee, would produce the extraordinary effect of giving to a minority, the power to control a majority of the state. [Mr. D. explained, and Mr. W. proceeded.] But he (Mr. W.) was prepared to show that it would have a contrary effect. He had been too long in public life, and mingled too much in public concerns, not to *fear* that what *had been*, *might be* again; and he was not quite so foolish as to offer a party proposition for the acceptance of a towering majority. Mr. W. then adverted to the various districts he had proposed, and contrasted them with those reported by the committee; and what, he asked, might not be the possible result of the doubtful majorities in Queens and Westchester, as taken in connexion with Suffolk and Kings? But who could doubt the political complexion of a district composed of Suffolk and Queens, as he had proposed? And where could be the doubt of the entire orthodoxy of the second district, composed of Westchester, as united either to Putnam or Rockland? Mr. W. went further into detail, to show that the division he proposed would operate rather unfavourably than otherwise, to the party to which he was attached.

If, then, the question was cleared of all considerations of party, it resulted to inquire whether it was practicable in its operation, and wise and correct in principle.

On the latter point, he would not enlarge. The minds of the committee were undoubtedly fixed and determined on the subject. And he could not but think it a little extraordinary, that gentlemen should have this morning avowed a change of sentiment in relation to the principle, and have pressed "the Federalist" into the service to support that principle, when the doctrines of that book must have been long since fully known and understood. It was written in that particular with the view of shewing the extent and bearing of numbers and sovereignty. To shew the weight which the small state of Rhode Island should have in relation to the great state of New-York; and that, in one branch of the legislative department, state sovereignty should be represented, without regard to numbers.

Mr. W. then went into a long and minute detail to shew that the proposition that had been submitted in favour of small districts, was less unequal in regard to population than that which had been submitted by the select committee—that it would bring the elections nearer home and present fewer fractions. He did not need the statement of the honourable gentleman from Queens (Mr. King) to convince him that a perfect numerical equality, could not be made without a severance of counties. He was fully aware that the exact number of 41,176 would not exactly suit every county, especially if a county should happen to have an odd number, and in that case, in order to make it precisely even, it would be necessary to split an individual. He did not expect to descend so far—but his object was to shew, that the integrity of counties might be preserved, without any great inequality or injustice in relation to the amount of population.

Mr. W. then proceeded to examine and compare the population and situa-

tion of the various counties in the state, and contended that the districts might be so constituted as to present, in many cases, fewer, and in no case more, proportionable inequalities, than the districts as reported by the select committee.

He replied to the argument of the honourable gentleman from Orange, (Mr. Duer) that large districts were preferable to small ones, on the ground that as you enlarge the circle of election, you are presented with elevation of character; and enquired why, on that principle, we should not open the state at large, constitute a great district, and elect our senators by general ticket? The argument proved too much, and the idea that it was necessary to vary from the mode of electing members of assembly, in order to diversify and bring into the legislative department a greater variety of interest, was, in his opinion, equally fallacious, as applied to the case in question. It was to be regretted, however, that gentlemen did not perceive the force of this argument before, when the question was under consideration relative to the freehold qualification. That principle, which in his opinion was the best test that could be resorted to, had been buried. He had attended its obsequies as a mourner to its grave, and it was too late to expect its restoration to life.

But if gentlemen were at length convinced of the expediency of introducing "a dissimilarity in the genius" of the constituent branches of the legislature, it was not too late to adopt an expedient that would effectually secure it, and preserve the same balance of power. It would be recollected that senators of the general government are elected by the respective legislatures, and the representatives by the people in the congressional districts.—The counties bear the same relation to the state as the several legislatures do to the general government, and the towns bear the same correspondent relation with the congressional districts. By districting the state, therefore, by towns or otherwise, for the choice of members of assembly, the same relative balance of power would be retained, and the choice brought home more immediately to the doors of the people.

And on this subject he could not but put his eye on the county of Richmond, about one-tenth of the population of which consisted of slaves—and even including them, by the same ratio of population, the city of New-York would be entitled to twenty-six members of the assembly. If the blacks were deducted, that county would not, upon the principle of equal representation, be entitled to quite one half a representative;—and yet what would not that county lose if it were not represented? On this subject of division, the committee were told by the honourable gentleman from Orange, that the state was practically divided into single districts now. If that be the case, why should the form of connection be retained after the practice had ceased to exist? In a district composed of nine counties, according to that idea, you give to one county the privilege of nominating a candidate, and compel the other eight to vote for him. A political meeting assembled at Durham, or at the Devil's Half Acre, at the head of the Delaware, dictates the senatorial candidate for distant counties, and if they cannot agree—perhaps they raffle for it.

Mr. W. agreed with the gentleman from Orange, that it was unwise to go too far in adopting innovations on the constitution that were not called for by public sentiment, but on this subject he did not think the Convention would outrun the public anticipation. It was desirable to bring home to the knowledge of the constituent, the merits of the candidate. It was by adopting this system that the state of Connecticut, with the most democratic form of government in the union, had been the most stable in its administration. The same man, annually elected, had sometimes represented the town in which he lived for fifty years in succession. And why, and how has this happened? The secret is, that no man is there paid so much for his public services, as to excite the cupidity of his neighbour. He is not, therefore, an object of envy. He is not regarded as a debtor, but a benefactor to the public. Hence it is, that the office of secretary of state there, continued in the family of Wyllys for near an hundred years, and until the family had almost become extinct. The reward for public services should be a mere indemnity for the expense. The state would not then be exposed to perpetual fluctuation. Here, as soon as a man is warm in

his seat, another is anxious to oust him. Slanders and invective are hurled at his head. The moment his head is raised above the water, it becomes a mark for the shafts of envy. These fluctuations, arising from these causes, have degraded the character of our councils, and it is well understood that men have belonged to our senate who required a committee of safety to guide them to Albany, and a committee of vigilance after their arrival to keep them true to the performance of their political duties.

Mr. J. Sutherland was opposed to the districting of the state by the Convention. He thought it had better be referred to the legislature. It was evident that there was no immediate paramount necessity for the measure, and it was very evident that the subject could not be approached without exciting a great degree of personal feeling. It was also worthy of remark and consideration, that whatever course or plan the Convention might adopt, would be sure to create dissatisfaction. The Convention were not advised on this subject, nor did they sufficiently understand the wishes of their constituents. The detail necessary for a proper adjustment and decision of the subject, must necessarily occupy much time, and it was well known, that the session had been already protracted far beyond the public expectation. He was disposed to do nothing more than to fix a principle for the legislature to act upon. This can and ought to be done. The arguments against single senatorial districts were, in his opinion, unanswerable. He thought the harmony of our system required that the senate should not be elected by the same local territories that elected the members of the assembly. The latter represented *local* interests; the former, *general* interests. If thirty-two districts were formed, the division of counties was inevitable; for he was fully persuaded, that the people would never submit to those inequalities which must necessarily exist without it. New-England had been referred to; but he believed that their senatorial districts were uniformly large. In Connecticut, to which the gentleman last up had referred, the election of senators was by general ticket throughout the state. In Massachusetts they were elected by districts, but their apportionment was made upon the basis of property. It is said that if large districts were created, the candidate for senator would be unknown to his constituents. But he would say, that if the state were divided into eight districts, no one ought to come into that body whose character was not known to a great majority of his constituents. That body should consist of men who had served the public in other and subordinate departments, and who had gained to themselves a name by their ability, fidelity, and zeal, in the public service. As to private character, it could not be generally known in any districts even of the small extent to which it was contemplated to reduce them. That subject was well known in respect to members of assembly. The mass of the people must necessarily rely, on that subject, upon the information of those in whom they have confidence. It had been advanced in favour of the project of creating single districts, that it would have a tendency to repress intrigue. How far intrigue had existed he did not know, nor was it, perhaps, material to enquire. It was Utopian to expect to get entirely rid of it. Our whole system of government was a system of influence. Influence pervades our private and local concerns, and will inevitably insinuate itself into those of a public nature. There appeared to be much alarm on the subject, although the council of appointment had been got rid of, and although the official patronage was dispersed all over the state. In his opinion, the distractions of the state were attributable to the accumulation of power in one body, and the Convention had struck at the root of the evil. Senators, before, had an indirect object in view. They did not so much value their seats in the senate, as their weight in the council of appointment. The alarm then might well subside, and he thought it a proper matter to be decided on by the legislature. If any project should be adopted, that of the gentleman from Dutchess, he deemed to be preferable to the others, although he wished to postpone it.

Gen. Root remarked, that he had not intended to take a part in this discussion. But he felt himself invited into the field by the honourable gentleman from Columbia (Mr. E. Williams) to combat some of his forcible reasons in favour of single districts. He would premise, that in districting the state for the choice of senators, he should keep the object steadily in view to divide it into so

many, (and no more,) as would enable the people of each district to elect one annually. He wished to have the voice of the people annually heard in the senate from every district in the state. It was peculiarly proper, now that the senate had become a branch of the appointing power.

The project of dividing the state into thirty-two districts, had been enforced by a variety of considerations. The paramount object appears to be, that the people may have more knowledge of the respective candidates from whom a selection is to be made. It seemed to be thought that they should be not only more knowing, but more inqusitive into the private character of the candidates, and the political operations of Greene and Delaware had been adverted to. He admitted that the Devil's half acre had been the theatre on which the political drama had been played, but it happened that the political associates of the honourable gentleman from Columbia, were the principal performers. The other day, that gentleman had thought that it was competent for the Devil's half acre, and Tinkertown, which adjoins it, and is about equally renowned, to elect justices of the peace for the whole county. It had been intimated that raffling had been resorted to in order to adjust the merits and pretensions of the respective candidates for congress. However this might have been elsewhere, he could say that in the bosom of the republican family at Roxbury, the successful gambler did not succeed. He was indeed supported at that time by the political coadjutors of the honourable gentleman, and perhaps his success in raffling had introduced him to their favour.

It had been said that a committee of safety had been sometimes necessary to escort members of the senate to the city of Albany, and committees of vigilance to guard them after their arrival. His recollection, too, on that subject, was not altogether feeble. He recollected full well that members of the legislature rode quarantine—that they were guarded with vigilance. And he could remember the time, too, when this happened. It was at a time when the bank of America was on its passage—it was at that gloomy period when corruption and a moral pestilence was introduced, that had disgraced the annals of the state.

The question was then taken on Mr. Bacon's amendment, and lost.

The question was also taken on Mr. Van Vechten's proposition, which was rejected.

Gen. Tallmadge's proposition was next in order.

Mr. Buel was in favour of this proposition, if any were adopted; but he would prefer that the subject should be left to the legislature. There appeared to be a wide difference of opinion among members, and it was better to consult public sentiment, before any permanent plan was adopted.

Mr. King. It is asked why the select committee proposed to divide the state into seventeen districts; though this has already been accounted for, it shall be again explained. It became evident to the committee, that the legislature, governor, and lieutenant-governor, must be chosen, preparatory to the commencement under the amended constitution. The Convention having decided that the political, should be the same as the calendar year; its commencement was presumed to be in 1823. The elections, will, therefore, occur in October or November, 1822; the ratio by which senators and representatives are to be apportioned among the districts and counties, has been established by the Convention, and is different from that under which senators and representatives are now chosen; the right of suffrage is also changed and extended. Hence the necessity of marking out new senate districts. The committee took the map of the state, together with the abstract of the late census of the United States, which is added to their report, and laid out seventeen senate districts—they were not able to make the districts entirely equal—fractions in the respective number of inhabitants contained in these districts were unavoidable, unless the lines of counties were broken up—but the preserving of the counties entire was deemed by the committee to be expedient.

The division proposed by the committee will be temporary, a census under the authority of the state will be taken in 1825, and every ten years afterwards; when it is made the duty of the legislature to re-apportion the districts according to the established ratio. A state census, beginning in 1825, and taken at

the distance of every ten years, with a census of the United States taken in 1820, and to be repeated every ten years, will hereafter show the number of the inhabitants of this state every five years.

I have no such skill in political arithmetic, as to be able to calculate all the effects which this apportionment may be likely to produce. It sufficed, in the opinion of the committee, that the former unequal districts should be abolished; and that it may be hoped, that the adoption of the smaller districts which are proposed, will diminish the great and acknowledged disadvantages which hitherto have been experienced.

Single districts might have been deemed preferable, and for the sake of a personal acquaintance between the electors and elected, I was inclined to prefer them; but the enumeration of the inhabitants of the several towns was wanting, to enable the committee geographically to establish single districts; and unless single districts, composed of contiguous territory, can be formed, without breaking up the integrity of the counties, it may well be doubted whether it would be expedient to form them—but the Convention have just now refused their sanction of single senate districts.

The select committee, as has before been stated, have no attachment to the senate districts which they have reported, and are ready to agree to any other and better plan. The question before the committee makes it necessary for them to decide, whether they will confirm the report of the select committee, or refer the subject to the legislature; or will adopt the scheme now proposed of dividing the state into eight small districts, of equal numbers of inhabitants, each district to elect four senators, which, by being classed, will require one to be hereafter elected annually.

The proposal of referring the subject to the legislature, has no other merit than that of referring an important measure to others, and in this way relieving the Convention, which is equally or more able to decide it themselves; the legislature will meet with the same difficulties as we ourselves do; they will have no better information than we have, or if in a more recent account of numbers it may be better, it will still be nearly as defective as the census before us; besides, the legislature will consist of two branches, and the bill will be subject to the executive veto—these are embarrassments to which the Convention are not liable; the provision is in the nature of an organic law, which should be made by those who amend the constitution.

The plan of eight districts possesses some properties which no other scheme contains. It doubles the number of the old districts; the new ones will contain an equal number of inhabitants, or nearly so; the lines of counties will be preserved unbroken, and each district will annually elect one senator; these, and other advantages, seem to give the preference to this plan.

A good deal has been said respecting public opinion, on certain great points there has probably existed a public opinion which extended itself throughout the state; thus the equalization of the rights of suffrage, the abolition of the council of revision and of the council of appointment, in which the Convention have been almost unanimous, evince the tone and unanimity of public opinion. In other questions that have been debated, or are yet to be discussed in the Convention, and concerning which the public cannot be supposed to have formed an opinion, the best standards of public opinion are the votes of the Convention—an assembly brought together from every part of the state, men who know and are known by the inhabitants of their respective counties, and who were recently elected for the purposes for which we are convened, are well qualified to ascertain public opinion, and are capable, after mature reflection, to pronounce the same.

If the Convention dispassionately, and without prejudice, debate, and honestly vote on the questions brought under their consideration, we may hope that our proceedings will be approved by our constituents; and in any event, by pursuing this course, we shall have the consolation to know, that on a great occasion, we have acted from motives, the purity whereof ought to protect us from censure.

Mr. Ross was at first in favour of thirty-two districts; but on further examination he believed it impracticable. The proposition of the gentleman from

Dutchess struck him in a more favourable light than any thing he had seen, and he wished it might be adopted.

Mr. Sharpe had first supposed, that to divide the state into thirty-two senatorial districts would be advisable; but on reflection, he had satisfied himself that the plan could not be effected without dividing counties more than he considered it prudent. He then turned his attention to the report of the select committee, and found that possessing similar disadvantages. There were before the house other propositions—to divide the state into eight districts, and to defer it for the consideration of the legislature. To these propositions he thought there could be no great objections; but of the two, he should prefer that suggested by the gentleman from Dutchess. Having had the honour of a seat in the legislature at a time when a similar opportionment and division took place, he was satified that it must lead to party feelings and measures. To avoid this would be very desirable. He had examined the plan proposed for eight districts, as exhibited on the map, and found that without dividing counties there would be less fractions than in any plan yet proposed. There would be a larger fraction wanting in the western part of the state than any where else; but this would be no more than justice, as that part of the state was increasing so fast in population that the deficiency would be soon made up. This mode was preferable to the report of the committee, because each district would annually elect one senator, and of course no section of the state would be without a fresh representation annually. As much time had been squandered unnecessarily, he hoped that this question would be taken without debate, and receive the unanimous vote of the committee.

Mr. Fairlie made a few remarks in favour of the proposition.

Mr. Buel offered the following proposition for consideration, after the question now before the committee had been disposed of:

1st. That it shall be the duty of the first legislature, or as soon as a census of the state can be obtained under the amended constitution, to divide the state into not more than nor less than districts, to be denominated senatorial districts, and to make a just apportionment of the thirty-two senators among the said districts; that the number of said districts shall not thereafter be less than nor more than and shall consist of as equal a number of inhabitants as may be (excluding aliens, paupers, persons of colour not taxed, and convicts.) If a district shall consist of more than one county, the counties shall be contiguous, and no county shall be divided in forming a district.

2d. The 3d of Mr. Van Buren's amendments—that the first senate under the amended constitution shall be chosen by the present four great districts—giving to the three first, seven senators each, and to the fourth, or western district eleven.

3d. The 4th of do. requiring the senate to be divided by lot into four classes, and that the seats of the members of the first class be vacated at the expiration of the first year, and of the others, at the expiration of each year in succession, so that one-fourth of the senators be chosen annually.

4th. The 5th of do. requiring a just apportionment of the senators to be made among the respective districts whenever the state shall have been divided into senatorial districts by the legislature, as provided for in the first amendment.

Gen. Tallmadge said, when the house first took the report of the committee under consideration, he had early made his objections to that report, and pointed out some of its imperfections, and the inequalities in representation which would be produced by it; and he had then expressed his belief, that the state could not be divided into thirty-two districts, for the choice of senators, without the plan containing within itself such inconvenience in the division of towns and counties, or such injustice and violation of the principle of equal representation, arising from the inequalities of the single districts, as to render it wholly inadmissible. He had then given in part his reasons against the report of the committee, and he had suggested a division of the state into eight equal districts of contiguous territory, and entire counties, as the only practical division which would produce equality of representation, and an annual election, and also be in accordance with the great principle adopted in the formation of our state governments; that the popular branch should be composed of the immediate

representatives of counties, and local interests and feelings: while the senators should come from districts composed of different counties, and making a diversity in the representation in that body. From respect to the house, he had forborne to repeat this day the reasons he had assigned on a former occasion; but he presumed the gentleman from Columbia (Mr. Williams) must have forgotten his former remarks, and that his plan of eight districts had been submitted in the outset of the business, or he would not have so unjustly imputed to him any change of opinions on this subject since the former debate. The plan this day submitted by him in detail, was the same suggested by him in the first instance. He had not undergone any change of opinion; and he was confident no other plan but this of eight districts, would secure equality of representation, provide for annual elections to the senate from each district, and preserve the proportion and harmony in the formation of the government, being based upon representation from counties in one branch, from districts in the other, and terminating in the third branch in one executive elected from the whole state.

Mr. T. said, the gentleman from Columbia had urged as an argument against eight districts, that it produced the election of unfit and unworthy persons to the senate, and he had detailed, in strong terms, the practices of district nominations, which he had described, in conjunction with high salaries, as the source of all the evils arising from our legislature. Mr. T. said, he greatly differed from the reasoning of the gentleman; whether candidates were nominated by counties or districts, probably the same result would be produced. The county sent delegates to make the district nomination, and there the voice of those delegates would be regarded; and whether that voice was expressed in single counties, or by districts, the same nomination would be produced. Mr. T. said, the evils felt from our present system did not arise, as had been suggested, from district elections to the senate. Those evils were more deeply planted, and are so from other and far different causes. It was from the operation of the appointing power, as had been heretofore practised, and from the high salaries and perquisites attached to offices. He took this occasion to unite with the gentleman from Columbia, (Mr. W.) in deprecating the high salaries and perquisites which had been allowed, and he thought, much to the discredit of former legislatures. He had, a few days past, given his earnest on this subject, by voting for *two* dollars per day as the future wages for members of the legislature, and if such measure could be brought about, it would, as its consequence, secure a general reduction in the expenses of the state. But the evil of the times would not be effectually remedied, unless this Convention should pursue the good work on this point, which had been in part executed: he meant the purification of the legislative branches. We have already provided, said Mr. T., a clause prohibiting any member of the legislature from receiving an office, and had also, as he thought, improvidently rejected another clause, which provided that no member of the legislature should hold an office and continue a member. Without such a provision it can never be hoped, that a proper and rigid scrutiny will be observed by the legislature over the conduct of persons in office. There must be a complete separation of the different departments, or the public will not have justice. He fondly hoped such a provision might be yet adopted, when the proceedings came to be taken up for final revision, in Convention. But, said Mr. T., even this will not be sufficient, unless you take the appointing power from the senate. Heretofore appointments were made by a council chosen by the assembly from the senate, and it had confessedly corrupted the whole body politic, and disgraced the moral character of the state. Disperse, said Mr. T., the appointing power as much as possible to the several counties, and remove the residue from the senate to some proper authority created for such purposes; and then take away the inducements for competition for office, by graduating salaries and perquisites to a fair subsistence of the incumbent; which he contended was the surest standard: and then, and not till then, can you expect a removal of those causes of contention, and of the public disquiet, which were now so much the subject of complaint. When this was accomplished, and he fondly anticipated its consummation, we could hope a quiet state, a moral character for our people, and private representation to individuals. The inducements to calumny and detraction would be removed. It

was a combination of causes, arising from the defects in our form of government; and especially as connected with the old council, taken from the senate, and not from the district election of senators, as had been imputed by the gentleman from Columbia, which had so much disorganized and disgraced this state. He believed the election of senators by districts would produce as fit men, and that the plan better accorded with the theory of our government.

Mr. E. Williams replied, when the question was taken on the first section of the resolution of Mr. Tallmadge, and carried.

Mr. Dodge moved that the committee now rise and report; and that Mr. Tallmadge's proposition be referred to the select committee on the legislative department.

The Chairman stated, that such reference might be made in Convention, but not in committee of the whole.

Mr. King hoped that that part of the report which relates to the assembly, would be disposed of before the committee rose, which course was agreed to.

Mr. Young moved that the number of the members of the assembly be fixed at one hundred and twenty-eight.

Mr. E. Williams said this was a subject of too great importance to be disposed of in haste, and moved to rise and report.

It was finally agreed to postpone the further consideration of this subject, and the committee rose and reported without asking leave to sit again.

In Convention, ordered, that the report, as amended, be printed; and that Mr. Tallmadge's proposition be referred to a committee of thirteen for revision.

On motion of Mr. I. Sutherland, ordered that the report on the appointing power be made the order of the day for to-morrow.—*Adjourned.*

FRIDAY, OCTOBER 19, 1821.

Prayer by the Rev. Dr. Cumming. The President then, at the usual hour took his seat, and the minutes of yesterday were read and approved.

The Presdent thereupon announced the nomination of the following gentlemen as a committee of thirteen, to whom yesterday the subject of the senate districts was directed to be referred.

MR. KING, of Queens,
MR. SHARPE, of New-York,
MR. TALLMADGE, of Dutchess,
MR. HALLOCK, of Orange,
MR. ROOT, of Delaware,
MR. TOWNSEND, of Washington.
MR. ROCKWELL, of Saratoga,
MR. DODGE, of Montgomery,
MR. BREESE, of Oneida,
MR. FENTON, of St. Lawrence.
MR. BRINKERHOFF, of Cayuga.
MR. CARPENTER, of Tioga,
MR. PORTER, of Erie.

THE APPOINTING POWER.

On motion of Mr. Sharpe, the Convention went into committee of the whole on the Appointing Power—Mr. Wheaton in the chair, Mr. Lawrence being absent.

The question recurred upon the 6th section of the report, relating to the appointments unprovided for, in the city of New-York.

Mr. Radcliff proposed, as a substitute therefor, the following:

"That the clerks of the courts of oyer and terminer and general sessions of the peace, and of the sittings in the city of New-York, and all justices or judicial officers of courts inferior to the court of common pleas or general sessions of the peace in said city, and the clerks of such courts respectively, and the officers of the health department for said city, and the officers of the harbour and port of said city, and the commissioner or officers of excise therein, which are or may be created or established in and for said city, shall be appointed by the common council thereof, and hold their offices during the pleasure of the said common council, except that the said justices shall hold their offices for four years, unless removed in the manner provided for the removal of the justices of the peace in the other counties of this state, and that all other officers in said city, whose election or appointment is not otherwise provided for by this constitution, shall be chosen or appointed in such manner as the legislature may from time to time direct."

Mr. R. stated his object to be, to preserve to that city the same mode of election as was given to the country, in relation to such officers as were common to both, and to provide a proper mode of election for the residue, which were peculiar to the city. He stated in detail the reasons which had induced him to think the foregoing as correct and proper a mode, as would be practicable and convenient. He also adverted to the communication made by the secretary of state, in relation to the number of officers in the city of New-York, and stated that there had been a great misconception as to that subject. In examining the matter minutely, it would be found that instead of seven hundred offices, there were not more than forty that were, or ought to be, peculiar to that city. The first judge and recorder were the only officers whose duties were exclusively judicial; whereas, each of the other counties had five. There was but one coroner; whereas, other counties have ten or twelve. With respect to masters in chancery, commissioners to acknowledge deeds, and notaries public, there had been an abuse and imposition upon that city, by creating a number altogether greater than the public good required. It was one of the inverted blessings which the council of appointment had dispensed, and he hoped most sincerely that the number would be reduced. With respect to the public notaries, three hundred forty-three were stated to exist in the city, but on examination, he had ascertained that this number included all that had been appointed since the year 1784. The present number of these officers, therefore, was greatly misunderstood, although he agreed they were too numerous. He also examined at length the other various parts of that communication, and concluded by insisting that no danger could arise from adopting the amendment.

Mr. Tompkins did not wish to interfere with such officers as were peculiar to the city of New-York; but with respect to the resident physician, the health officer, and commissioner of the health office, if they were local officers, they belonged rather to the county of Richmond, than to the city of New-York; but in fact they were officers of the state at large. The revenues and disbursements of the establishment, were general to the state, although placed within the local limits of the county which he had the honour to represent, He therefore moved to strike out the words " and the officers of the health department for said city."

Mr. Jay. Before the committee decide upon the questions now before them, I beg leave to call their attention to the patronage now exercised by the mayor and common council of the city of New-York. It is proposed that the mayor, who has heretofore been appointed by the state, shall hereafter be appointed by the common council, and of course be dependent upon it. Should this proposition be adopted, you will increase the patronage of that body, not only by enabling them to bestow the office of mayor, but also by placing virtually at their disposal, all the patronage now vested in him. This, though consisting of small appointments, is of a nature to give immense influence to him who possesses it. The mayor grants, or refuses, at his own pleasure, all tavern licences, and these exceed two thousand. He grants and revokes at his own pleasure licences to about fifteen hundred carmen, and I believe, though I am not certain, to several hundred other carmen, who carry earth, and are called dirt carmen. He in like manner licences all the hackney coaches and

all the public porters. He appoints the high constable, first marshal, and all the marshals of the city, amounting to about sixty, and he grants licences to all the pawn-brokers. These last, however, are, I believe, entitled to licences on paying for them.

I do not mean to assert that the powers of the mayor are greater than they ought to be, or that they are improperly exercised. But it will be perceived that near four thousand persons depend at least for a part of their subsistence on his will and pleasure. Independently of this patronage, the common council appoint a counsellor, whose office, in point of emolument, is more valuable than that of the Chancellor of the state; an attorney, whose office is more lucrative than that of the chief justice of the supreme court; a comptroller, a treasurer, a public administrator, a superintendent of the alms-house, a keeper of the city prison, a keeper of the penitentiary, a street commissioner, a city inspector, a chief engineer, and a superintendent of repairs, all lucrative offices. They appoint assessors and collectors of assessments, all the city surveyors, six clerks of justices of the peace, who receive salaries of seven hundred and fifty dollars a year, an inspector of weights and measures, all the sealers of weights and measures, a physician to the city prison, a physician and surgeon to the alms-house, captains of the watch, clerks of the markets, a clerk of the common council, who is also clerk to the board of health, and to the board of supervisors, measurers of grain, lime, and coal, inspectors of wood, weigh masters, pound keepers, health wardens and fire wardens, and a number of subaltern offices. All the stalls, except about a dozen or fifteen, in all the markets, belong exclusively to the corporation, and some of them are of great value. I have known one of those which are private property, sold for fifteen hundred dollars, and have been told by the owner of another, that he had been offered for it three thousand dollars. These stalls were distributed among the butchers by the common council, and until lately without requiring a rent. Now, sir, I would ask whether, in proportion to the inhabitants of the city, this mass of patronage is not already nearly as great as that possessed by the council of appointment? But the common council has still other means of influence. The contracts for lamps and oil, for supplying the poor, for paving the streets, removing earth, for building and repairing wharves, and for many other purposes, amount annually to an enormous sum. In making this statement, I have been obliged to depend wholly upon my memory, having no documents to refer to; but should I have committed errors, some of the members from New-York who hear me, and who are better acquainted with the corporation than I am, will, I hope, correct me. And now I would ask, whether it is prudent to commit to this body the distribution of the important and valuable offices mentioned in the resolution upon your table? If the accumulation of patronage in the council of appointment has been proved by experience to be so pernicious as to induce us to abolish it by an unanimous vote, is it likely that a similar accumulation in the common council will have a beneficial effect? Is it not possible that it may have an unfavourable influence on their legislation, and may they not, by means of it, establish their power so firmly that even unjust and oppressive measures may be pursued with impunity? I have no disposition to speak of the common council with disrespect, but it cannot be disrespectful to say of them, that they are neither more pure, nor more enlightened, than the senate of the state. Why, then, should it be supposed that they are better qualified to select officers fitted to serve the public? With respect to the precise question now before the committee, I concur with the honourable gentleman from Richmond, (Mr. Tompkins) that the health officer should be appointed by the governor and senate. If either of the three health commissioners should be chosen by the common council, it is the resident physician. But as to the commissioner of the health office, his functions seem to be misunderstood. It is not his duty, as has been supposed, to superintend the removal of nuisances; that is the duty of a municipal officer called the city inspector. He receives and disburses the monies raised and appropriated by the state for the support of the marine hospital, and the other objects connected with the quarantine establishment, and ought, therefore, in my opinion, to be commissioned by the state. I do not mean at present to repeat the considerations which I urged on a former occasion, not to detain the

committee by additional remarks; but I hope they will weigh the consequences maturely, before they transfer to the common council the power of appointing to the important offices mentioned in the resolution submitted by the gentleman from New-York.

Mr. Fairlie opposed the amendment.

The health department was important; and the quarantine ground at Staten-Island was of far greater consequence, than the celebrated spot yesterday alluded to in debate.

Mr. Radcliff remarked, that if there was any thing of peculiar interest in the appointment of the officers of that city, it was in relation to the health department. If there was any thing in which the people of this city could be trusted, and to which their sensibilities were alive, it was the designation of those officers who were appointed to guard them from the introduction of disease. That department was established to protect—not the county of Richmond, but the city of New-York. It was the city that was to be peculiarly affected by the conduct of that department. They were associated with the public regulations of the city. It was therefore important that there should be a harmony between the different officers who constitute that department, arising from the circumstance of deriving their authority from one and the same source. These officers were not important or desirable, except as it related to the welfare of the city. Every person, excepting the present incumbent, who had heretofore filled the office of health-officer, had died; and although it was an office of some emolument, yet its patronage was only desirable, as it was important to the best interests of the metropolis.

Mr. R. replied to the remarks of the gentleman from Westchester, (Mr. Jay,) and considered the picture he had presented as overdone, although he admitted that the patronage of the mayor was great, as derived from his charter privileges;—but he inquired, where could that power be more safely or properly reposed? A great state, with a great city, must necessarily confide important powers, and unless some better system could be devised, he could not see the inexpediency of referring to the common council the appointing power, to the extent which his amendment had proposed.

Mr. Tompkins did not object to the amendment of the gentleman last up, so far as related particularly to the city. But foreigners were interested in the subject. The United States and state establishments were also concerned in it. He had seen seventy-four vessels riding there at anchor, in quarantine, at one time. All these, and the county of Richmond, were especially and deeply interested in this appointment. He did not claim the appointment for the county of Richmond, but as foreigners, and the government, and the people of the United States, and of this state, were interested in it, he thought it should be confided, not to a local, but to a general appointing power.

Col. Young had no doubt that the city of New-York felt a great solicitude for the proper appointment of the health officer. So also did the country. It was, therefore, incumbent on the gentlemen from the city to show that the state appointing power had abused their trust in previous appointments, before they claimed it. He believed this was not chargeable upon that power.

It had not occurred to him, that there was such an extent of official patronage in that city as had been developed this morning. Unless, therefore, such abuse had been shewn, he thought there was no reason for the local authorities of that city to claim it for themselves. And there was, in his opinion, great weight in the consideration that the expenditure and revenue of that establishment were sustained by the state on the one hand, and derived from vessels that come from foreign ports, on the other.

Mr. Edwards observed that the object, and the sole object, of establishing the health department at Staten Island, was to prevent the introduction of yellow fever and pestilence into the city of New-York. The question now is, shall this officer be designated and appointed by those whose health, interest, and lives, are at stake, or shall he be appointed at the distance of 160 miles from them, and by persons who cannot be affected by the manner in which the duties of that office are discharged? It is a serious question, and deserves deliberate consideration. How far we had suffered heretofore from bad appoint-

ments he could not tell; but from the nature of the case, it is reasonable to suppose that the fathers of that city would appoint more suitable men, than persons residing at so great a distance. This officer is placed in his sentry-box on Staten Island—not to guard the county of Richmond, but the city of New-York. It is said that this establishment was purchased by the state, and that this officer has the sole management and control of it. He (Mr. E.) had no desire to control the property of the state. He was willing that that should be left to the legislature.

Mr. E. animadverted upon the remarks of the gentleman from Westchester, (Mr. Jay,) and contended that the patronage of the corporation of New-York was altogether less than would be inferred from his statement, and expressed his belief that the whole amount of salaries paid by the corporation did not exceed $25,000 per annum. He thought there was no danger in confiding the appointing powers to the common council. They were annually elected, and as the people could not assemble en masse, this was bringing home to them the appointment, as far as was practicable.

Chancellor Kent was in favour of the amendment proposed by the gentleman from Richmond. Not only the city of New-York, but the commerce of the United States, was interested in the health office department. There was no danger of favouritism in referring the appointment to the general appointing power, as the governor was required to nominate by message. It was a concern of general interest. Long Island, the shores of the Hudson, the United States in general, and foreigners, would all be affected by it. Besides, he was not disposed to accumulate too much power in any body, however respectable and important that body might be; and he thought the common council would have power enough without this addition.

Mr. Sharpe thought the health officer was a very important officer, and the resident physician and commissioner of the health office, were local officers. The latter ought surely to be selected and appointed by the city. Their duties were pressing and great. They were empowered to fence up the streets, and utterly shut up and discontinue the commerce of the infected parts of the city. He thought the former was a state officer, and should be appointed by the state authority. In his opinion they should derive their appointments from different sources. They would thus be a check upon each other, in the expenditure of the monies that passed through the hands of that department. A hospital and church had been erected from its surplus funds, and experience had shewn, that those health officers who went to Staten Island, whatever might be their circumstances when they went there, when they came away, if their lives were spared, came away men of large property.

It had been said that the patronage of the mayor was enormous. This was not correct to the extent that it seemed to be supposed. With respect to carmen and porters—where was the importance of the patronage? Somebody must sign the licences—and for what purpose? For his benefit, or to his emolument? Not at all. It is merely for the security of the public, in order that if a person of that description should run away with a man's trunk, by knowing the number of his cart, or barrow, the fraud might be detected. Mr. S. also examined other offices of similar local description, to shew that the patronage respecting them was not important, and that it could not be dangerous to confide it to those who were annually elected by ten different wards in the city. Mr. S. was willing that all state officers should be appointed by the general appointing power of the state; but with respect to the residue of others who were not provided for, they should be designated and appointed either directly by the people, or by those who derive their authority immediately from the people; and he applied this principle to the various offices which had not been hitherto provided for. Mr. S. thereupon moved that the committee rise and report, with the view of referring the subject to a select committee.

Mr. Munro said, that a motion had been made to reconsider the vote, relative to the appointment of mayor of New-York; and although the motion for reconsideration prevailed, the subject had not been acted on. He made some remarks in favour of taking up that subject now.

After some desultory discussion, the committee rose and reported.

In Convention, Mr. SHARPE moved that the committee of the whole be discharged from the further consideration of the subject, and that the same, together with whatever relates to the subject of appointment, not hitherto acted upon, be referred to a select committee.

After a desultory discussion of the subject, Mr. SHARPE withdrew his motion, to the end that gentlemen might take such course in relation to it as they might think proper.

COL. YOUNG then moved that the whole subject of the appointing power be referred to a select committee.

MR. BACON was unwilling to travel over those parts of the report of the select committee on that subject, which had been already passed over and settled.

MR. P. R. LIVINGSTON reduced to writing the object of Mr. Young, and presented the same in the terms of the following resolution:

"That the committee of the whole be discharged from the further consideration of the report of the committee on the subject of the appointing power, and that the same be referred to a select committee of , to take the said report into consideration, and to make such amendments and to report the same as they may think proper."

COL. YOUNG assented to the resolution.

MR. VAN VECHTEN was opposed to referring this subject to a select committee. Such a committee would not be at liberty to give and take, as had been suggested, from the principles adopted by the Convention. It appeared to him we were treading back the ground we had once traversed, and were preparing to protract our business, of which the people were already weary.

MR. VAN BUREN was also opposed to this general reference. He thought it would create alarm and apprehension among the people, that the Convention were about to undo all they had done, and to extend the session to a great and unreasonable length.

COL. YOUNG contended that the reference ought to be *general*, and not in *detached* parts, as one might have an important bearing upon the other.

MR. EDWARDS said, that if any one subject had been thoroughly winnowed, it was this which respected the appointing power. The people were already wearied with our protracted session, and it was desirable to finish and complete our business as we advanced.

MR. P. R. LIVINGSTON advocated his resolution, and contended that great good had been produced by former and similar references.

MR. N. WILLIAMS rose to urge the propriety, at this stage of the discussion, on the appointing power, of referring the whole subject to a select committee. It was important not to lose time, but more important to the Convention, and the people, that every thing should be done with due deliberation.

The objection urged so strongly, that if the subject was now referred to a committee, the whole must be again discussed in the Convention, appeared to him not to have weight. The Committee would doubtless pay all proper regard to the principles settled in committee of the whole, and the report must be submitted sooner or later, to a special committee for revision and adjustment.

But why, he asked, do we find such extreme anxiety expressed by certain gentlemen in the covention, to have the appointing power of the city of New-York, acted on by itself? Have we not more than once been told by some of the honourable gentlemen from that city, that they were willing, nay, solicitous, to be placed on the same footing with the country in relation to appointments? And yet, now, when there is a prospect of attaining that desired object, by a reference of the whole to a select committee, who will be able to adjust and report a uniform plan, an alarm is excited, and objections are raised.

Although he could not well comprehend all this discrepancy of action, he would be allowed to conjecture, and he would do it with all proper delicacy, that while there was some want of concert as to the regulation of city patronage and power, some of the honourable gentlemen from the city, came here perfectly well agreed as to their plans for governing the country; for they act on this point with fatal firmness, and almost entire unanimity. Indeed, he said,

the confusion on this subject had chiefly arisen from the various plans in relation to New-York, which had been laid upon our tables. One project had scarcely been printed and read, before another had come upon us by surprise; and ere that was fully understood, the subject must be referred to a select committee. He would not object to this, and only asked that the whole report might go together.

He would say very little about the appointing power in New-York. He did not pretend to know much about it, and did not wish to embarrass the subject. As much power and patronage as it should be thought proper to be given to the common council of that city, he did not doubt would be executed discreetly, wisely, and justly. But the question was, how much should be given? Shall we give up to the city authority the whole regulation of that grand emporium, and thus create a power that might become, in process of time, greater than that of the state? He should question the wisdom of this. One honourable gentleman from that city had said, to be sure, that there was no danger in placing patronage in their hands, for it would be exercised by the fathers of the city. We had heard, said Mr. W. of the fathers of ancient Rome, the *Patris Conscripti;* and they were not backward to grasp at power when opportunity presented. They first governed the imperial city; then all Italy; and then extended the arm of power over the mightiest and most extensive government in the world. Should the powers of the city and state be separated, and become independent, the one of the other, great evils might arise; and these fathers of the city might, perchance, aim to be fathers of the state, and possibly endanger even the Grand Canal! [Here the gentleman was called to order; this subject was not before the Convention.] Mr. W. continued, and said he did not intend to be out of order, and intended to shew that the appointing power of the state, as well as of the city, in order to have a perfect whole, ought to be referred to the same select committee. And with this view, proceeded to urge further reasons why this course ought to be adopted.

A further debate ensued, in which Messrs. Ross and Briggs supported, and Messrs. Edwards, Van Buren, and Kent, opposed an unrestricted reference, when the question was taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Bacon, Brooks, Buel, Carpenter, Carver, Child, D. Clark, R. Clarke, Clyde, Collins, Day, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Huntington, Hurd, Jay, Jones, Kent, King, Lansing, Lefferts, M'Call, Millikin, Moore, Munro, Park, Paulding, Pike, Pitcher, Porter, Price, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rogers, Rose, Rosebrugh, Sage, Sanders, N. Sanford, R. Sandford, Seaman, Seely, Sharpe, Sheldon, R. Smith, I. Sutherland, Swift, Sylvester, Tallmadge, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, A. Webster, E. Webster, Wendover, Wheaton, E. Williams, Woods—86.

AYES—Messrs. Barlow, Beckwith, Briggs, Brinkerhoff, Burroughs, Case, Cramer, Fenton, Knowles, A. Livingston, P. R. Livingston, Nelson, Rockwell, Root, Ross, Russell, Schenck, Starkweather, Steele, Taylor, Wheeler, N. Williams, Wooster, Yates, Young—25.

Mr. Radcliff then moved that that part of the report of the committee on the appointing power which had not hitherto been acted upon, be referred to a select committee. Carried.

Col. Young moved that the same be referred to the delegates from the city and county of New-York. Lost.

It was then ordered that said committee consist of the number of thirteen.

Mr. Munro offered a resolution, which after amendments by the mover, and by the Convention, was referred to the foregoing committee, as follows:

"*Resolved,* That the mayor of the city of New-York ought to be appointed by the governor, with the consent of the senate."

Mr. Ross proposed to refer the following resolution to the same committee:

"That in each of the towns of this state, there shall be elected at the annual town meetings thereof, one coroner, who shall be, ex-officio, a commissioner for taking acknowledgments, and who shall, before entering on the duties of his office, take and subscribe the oath of office before the clerk of the county." Lost.

On motion of Mr. Buel, so much of the report of the committee on the legislative department, as had not been referred to the new select committee, was referred to a committee of the whole, and the Convention thereupon resolved itself into a committee of the whole, on so much thereof as relates to the bill of rights, which had been referred to this committee.—Mr. Van Buren in the chair.

The resolution of Gen. Tallmadge, in relation to slavery and involuntary servitude, was called up.

Mr. Sheldon thought it ought not to pass. It went to authorize a master, after his slave had become old, decrepit, and useless, to throw him as a burthen on the community.

Col. Young said it was too broad. It would release the apprentice from his indentures, and, in a great measure, tend to weaken parental authority.

Gen. Tallmadge would make a few remarks explanatory of the resolution which he had the honour to submit. He alluded to the law of 1799, which enacted, that all children born of slaves after that time should be free,—males at the age of twenty-eight years, and females at the age of twenty-five. But the law of 1817, made no provision that would prevent the existence of slavery in this state until 1846, as it was to operate only prospectively. These acts, however, indicated the sentiment of the public, and were in the nature of a pledge, which ought to be redeemed by inserting this provision in the constitution. It was a mistake, he said, that slavery would, by the existing laws, cease in this state, in the year 1827; but he hoped the Convention would decide, that it should not continue after that time. In such case, the legislature would have an opportunity, before that period, to make proper provision for their support during their second infancy.

Mr. Sharpe was opposed to the resolution.

Gen. Root had two solid objections to it, and one of minor importance. It provided that "*from and after* the 4th day of July, 1827," the slaves should be free. He did not know why their annual festival should be put off one day later than that of the whites. Ours is held on the 4th, but theirs is postponed to the 5th.

But he had objections of more importance. The first was, that it was unnecessary, as the legislature had already done what this provision contemplated their doing, and there was an act of that kind, that there was no probability they would ever recal. In the second place, he did not wish to deface and blacken the constitution by any provision in which slavery should be recognized.

Mr. Radcliff regarded it as a proper subject for legislation. He was not an advocate for slavery, but he thought the legislature had advanced with equal pace in the progress of public opinion, on the subject of emancipation.

Mr. Briggs thought that posterity would find out that we had slaves here, whether we blackened the features of the constitution with them or not.

Mr. Buel was in favour of the resolution. The gentleman from Delaware is disposed to omit this provision in the constitution, and is opposed to blackening that instrument by introducing it. But our public records recognize the fact of the existence of slavery, and it had already been inserted in the constitution in the distinction between white and black votes in the exercise of the right of suffrage. It was an important provision, and the subject ought not to be left to legislative discretion. Justice required it, and public expectation would warrant its insertion.

Mr. E. Williams opposed it. It was a clause in favour of common beggars. Nothing was more interesting to the people than the system of the poor laws. Work-houses had been established with salutary effect, and he believed that these slaves turned loose would become strolling paupers, and would be willing to remain so if they could avoid labour.

Mr. Briggs said, that if in the work-houses they were compelled to labour, it was with their own consent.

Mr. Sutherland proposed to offer a substitute if this should be rejected, the purport of which was, to confirm and make unalterable the existing laws on the subject of slavery.

Mr. Sharpe observed, that this resolution would turn slaves out of the warm kitchens of the farmers, where they had lived comfortably, to perish in hovels. It was injurious to the slave. Slaves had been sold on the faith of the law as now existing. Formerly, if a slave ran away, $100 dollars reward was offered for his apprehension. Now the kitchens of Long-Island are emptied upon the city of New-York, and the reward offered is six cents, but no charges!

Gen. Tallmadge asked, in relation to the subject of work-houses, whether gentlemen intended to repeal the law providing for their liberation in 1827? If they did not, it was our moral duty, by a constitutional provision, to guaranty their emancipation. The law makes slaves of those children who were born of slaves after 1799, and before 1817, so that instead of a total emancipation in 1827, slavery might be continued in this state until 1846, unless this provision should be adopted.

Gen. Root moved to amend, by striking out the words "from and after the 4th day of July, 1827." *Carried.*

On the section as amended.

Mr. N. Williams thought it was a matter peculiarly appropriate to legislation, but he was not willing to let slaves loose on society, without any provision for their support.

Mr. Jay professed himself to be zealous in the cause of emancipation, but he thought the law, as it now stands, was more wise and expedient than an immediate freedom. The cause of humanity would gain nothing by instant emancipation.

Chancellor Kent believed, that if a call for the previous question was ever proper, it was peculiarly so on the present occasion. He had no doubt that it was best, as well for the slave as the master, that the law should remain as it is. Slavery was universally reprobated, and no new constitutional provision was necessary to give that sentiment additional impulse. It would in his opinion be as proper to provide that the legislature should make no law to hang a man without a trial—or a law in favour of polygamy, or laws that might tolerate a violation of the commandments of the decalogue.

Mr. Radcliff moved to postpone the subject to the first day of January next.

Gen. Tallmadge, thought nothing could be gained by endeavouring to flee the question.

Mr. E. Williams remarked, that this was the first proposition that had been presented for the confiscation of vested rights. Masters had rights that ought not to be violated; and as to the slave it was a crusade against the last remaining hope of the miserable African. He has now a claim to support—a claim which the laws of God and man contribute to enforce. By this provision the master and the slave would be severed, and the rights of both essentially impaired.

The Ayes and Noes being called for, the question of postponement was decided in the negative as follows:

AYES—Messrs. Bacon, Breese, Carpenter, D. Clark, Collins, Dodge, Dubois, Dyckman, Fish, Frost, Hees, Humphrey, Hunt, Hunting, Huntington, Hurd, Kent, King, Lefferts, P. R. Livingston, M'Call, Millikin, Paulding, Pike, Porter, Radcliff, Reeve, Richards, Rosebrugh, Sage, Seaman, Sharpe, I. Smith, R. Smith, Starkweather, Swift, Taylor, Townley, Townsend, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Verbryck, E. Webster, Wendover, Wheeler, E. Williams, Woods, N. Williams, Wooster.—50.

NOES—Messrs. Beckwith, Briggs, Brinkerhoff, Brooks, Buel, Burroughs, Carver, Case, Child, R. Clarke, Clyde, Cramer, Day, Duer, Edwards, Fairlie, Fenton, Ferris, Hallock, Hogeboom, Howe, Hunter, Jay, Knowles, Lansing, A. Livingston, Moore, Munro, Nelson, Park, Pitcher, Price, Pumpelly, Rhinelander, Rockwell, Rogers, Root, Ross, Russell, N. Sanford, R.

Sandford, Schenck, Seely, Steele, I. Sutherland, Sylvester, Tallmadge, Tripp, Tuttle, Van Fleet, Ward, A. Webster, Wheaton, Young—54.

Mr. Radcliff moved to amend by adding " and the legislature shall provide by law for their support by their present masters." Lost.

Mr. N. Williams then moved the previous question, which was *carried*, and a division being called on the main question, it was decided in the negative, as follows:

NOES—Messrs. Bacon, Barlow, Breese, Brinkerhoff, D. Clark, Dodge, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fish, Frost, Hallock, Hees, Howe, Humphrey, Hunt, Hunter, Hunting, Jay, Jones, Kent, King, Lansing, Lefferts, P. R. Livingston, M'Call, Millikin, Munro, Nelson, Paulding, Pike, Porter, Pumpelly, Radcliff, Reeve, Rhinelander, Rockwell, Russell, Sage, R. Sanford, Schenck, Seaman, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Starkweather, Steele, I. Sutherland, Swift, Sylvester, Taylor, Tuttle, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Verbrick, Ward, A. Webster, E. Webster, Wendover, Wheaton, Wheeler, E. Williams, N. Williams, Wooster, Young—73.

AYES—Messrs. Beckwith, Briggs, Brooks, Buel, Burroughs, Carpenter, Carver, Case, Child, R. Clarke, Clyde, Collins, Cramer, Day, Ferris, Hogeboom, Huntington, Hurd, A. Livingston, Moore, Park, Pitcher, Price, Richards, Rogers, Root, Rosebrugh, Ross, N. Sanford, Tallmadge, Tripp, Van Fleet, Woods—33

The committee thereupon rose and reported: and on motion, *in Convention*, the report of the committee on the Judiciary Department was made the order of the day for to-morrow. Adjourned.

SATURDAY, OCTOBER 20, 1821.

The Convention assembled as usual, and the President took the chair at 9 o'clock, when the minutes of yesterday were read and approved.

THE LEGISLATIVE DEPARTMENT.

On motion of Mr. N. Sanford, the Convention resolved itself into a committee of the whole on that part of the unfinished business of yesterday, relating to the Legislative Department. Mr. Van Buren in the chair.

The question was stated to be on the fourth section of the report of the select committee, on the bill of rights, which had been referred to this committee, and which was as follows:

" 4. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; and in all prosecutions, or indictments, for libels, the truth may be given in evidence, *if it be made to appear*, that the matter charged as libellous, was published with good motives, and for justifiable ends; and the jury shall have the right to determine the law and the fact."

Mr. Briggs called for the consideration of his amendment to that section which was, to insert after the words, " the truth shall be given in evidence," the words—" and shall be a justification."

The question on the amendment was taken and *lost*.

Mr. N. Sanford offered the following amendment:

Strike out all after the word " evidence," and insert the following: " to the jury, if it be made to appear to the jury that the matter charged as libellous, was published from good motives, and for justifiable ends, the party shall be acquitted."

Mr. E. Williams inquired whether it was intended that the truth might in

all cases be given in evidence? Whether personal defects and private misfortunes were to be dragged before the public for malicious purposes, and the truth plead in justification?

Mr. Duer made a few remarks to shew that the amendment went no farther than the statute.

Chancellor Kent said there were cases, in which the truth ought not to be heard in evidence; he would suppose for instance, that a publication had been made, charging a female with some personal defect, which might subject her to ridicule and wound and harass her feelings, and the feelings of her family; the injury might be so gross, as to require a resort for legal redress; and he would ask, whether it would be proper, that in such a case, a court and jury should be compelled to hear evidence, which must necessarily be very indecent and indelicate, and such as must tend to vitiate the public taste, and to corrupt the public morals. The truth in such a case, so far from being a justification, ought to be considered an aggravation. Libels of that description could not possibly be published from a good motive or for any justifiable end; the publishers could have no other object in view, than to gratify the vile passions of envy or malice; and to permit them to give the truth in evidence, would be to degrade courts of justice into vehicles for propagating most effectually, the most detestable slanders. Mr. K. referred to a case, which had happened in England. A suit had been brought on a wager, relating to a French minister at the English court, the Chevalier D'Eon; the case was noticed for trial before Lord Mansfield, and it was proposed to enter into an examination, to prove before the jury, that the minister was a female. The judge threw the record from him with indignation, and declared that he would not permit the sanctuary of justice to be profaned with a proceeding so indecent.

To permit the truth to be given in evidence in such cases, would be affording to malice an opportunity to glut its vengeance; a defendant who had libelled a female of a family, would call as witnesses perhaps the mother and sisters; and would degrade them, by an examination, which could not be listened to, without shocking the moral sense of all decent people.

He had, he said, always been opposed to what was once considered the law of libels, to wit: that on indictments for libels, the truth could not, under any circumstances be given in evidence; and gave the history of a case which had been tried in this state in 1804. It was an indictment for a libel against Mr. H. Croswell. The trial was had before the then Chief Justice Lewis. The defendant offered to give the truth in evidence: the judge decided, that it could not be received. The question was brought up for argument before the supreme court of this state, and was argued for the defendant by the late general Hamilton, and a more able and eloquent argument was perhaps never heard in any court.

Mr. Hamilton, counsel for the defendant on that occasion, contended that the truth might be given in evidence, provided the matter charged to be libellous was published with good motives and for justifiable ends, and such was his (Mr. Kent's) opinion. There were only four judges on the bench at the time, and being equally divided, the matter rested there. It was, he said, in consequence of this trial, that the statute was passed on this subject, permitting the truth to be given in evidence under the above restriction. He wished, he said, to preserve the principles of this statute, but considered the amendment of the gentleman from New-York as going much farther.

If a way could be devised by which the jury could be enabled to judge of the motives from which the publication had sprung, without a previous examination of the witnesses, he would have no objection to leave it to them. But that, he said, could not be done. And the only way in which such indecent and indelicate examinations could be excluded, was to leave with the judge to say, whether the testimony could be received: He did not believe that this power would be abused; it was necessary for the due administration of justice, that confidence should be placed in them. If such enquiries were permitted, there would always be some unworthy members of the bar, who would press them upon courts and juries: He hoped, therefore, that the amendment would not prevail.

Mr. Duer was sorry to differ on a question of this kind with a gentleman for whom he entertained so high a respect as he did for the gentleman from Albany (Mr. Kent.)

Mr. D. said all that was wished, was to preserve the law as established by the statute to which the gentleman had alluded. The guilt or innocence of a party, he said, depended on his motives, and they could only be properly and correctly judged of by a jury after they had heard the evidence. If the section should be adopted as reported, it would give the whole power to the courts, to judge of the motives, and to shut out all enquiry if they thought proper—this would never do ; it would be a most dangerous power, and might be exercised with great oppression and injustice. A party would never be safe, however honest and upright his intentions might be.

He admitted that there might be cases where the rule would operate injuriously; but the evil which would thereby be occasioned, would be partial, and would by no means authorize the vesting of such an arbitrary power in judges, which might be so extensively abused: when this subject was under discussion before, continued Mr. D. it was admitted by the chief justice, that this section as reported, varied the law, as established by the statute. The amendment under consideration was the same in principle with that statute; it was more explicit and definite and removed all doubts as to its construction.

Mr. Dodge thought that the gentleman form Orange, (Mr. Duer) must have mistaken the meaning of the Chief Justice on this subject, if he supposed his object was to give to the court the power of deciding the law and the fact.—This was not his intention.

Here Mr. D. related the circumstances of a case of libel, in which he had the honour of being counsel, before the present Chief Justice, at a circuit court in Montgomery; in which he urged the propriety of giving the truth in evidence as a justification, but it was rejected by the Chief Justice, upon the ground that the publication could not have been for good motives and justifiable ends. Mr. D. then contended that the jury ought to determine whether the motives were justifiable or not, to which the court would not consent, alleging that he possessed the power, and was bound to exercise it, in rejecting the testimony which should go to prove the fact, as long as the publication, in his judgment, could not have been for good motives or justifiable ends. If he possessed this arbitrary power in one respect, he must in another, and of course judgment must go against the defendant, the truth not being allowed to be given in evidence.

We have been told by the honourable Chancellor, that such a case may be brought up to the supreme court and court of errors. He would ask, whether he could make a case under such circumstances that might be brought up? This question was put to the Chief Justice in the case alluded to, which he answered in the negative, leaving no remedy whatever.

The question before the committee was, whether this power should be still exercised by the court, or whether it should be left to the jury to determine upon the motives, as well as the fact?

With respect to this question, his opinion had changed within a short time, and he was satisfied, that there were circumstances, when it was proper that the truth should not be given—when there could be no possible satisfaction, and when an exposition of the facts could only serve to injure the feelings of the person libelled. He thought this power might be safely entrusted to the court, without the fear of its being by them abused. There might be many cases enumerated, where a publication could have been for no other than malicious motives and unjustifiable ends, and when a proof of the facts might serve only to injure the plaintiff in feelings and character, without benefiting the defendant. On this account, he thought the court ought to possess the power of determining.

Some authorities were cited by Messrs. Kent and N. Sanford, when

Gen. Root said a mistaken notion had arisen in this country, from the strong predilection which the judges and lawyers feel for the law of England. In England it was a maxim that the king can do no wrong. That maxim and law might do in a monarchical government, where the ministers are subjects of the

ridicule and recrimination; but in a republican government, to say that your president and governor can do no wrong, would not be endured. In England, the public officers, who live upon public plunder, are to be shielded from popular animadversion through the medium of the papers, or any other medium, even that of caricature. It is for the purpose of keeping up their monarchy, and therefore the greater the truth there, the greater the libel. In this country, where our governor and other great men are the subjects of scrutiny, we are told that the judges must be entrusted with the exercise of this power, which the honourable gentleman from Montgomery, (Mr. Dodge) has told us was exercised in a case which he had the honour of defending; when the judge determined that the truth should not be given in evidence, and that he was exclusively authorised to seal irrevocably and irremediably, the fate of his fellow-citizens.

Give me, said Mr. R. a Turkish bashaw, who directs the head of an individual to be stricken off, and then proceeds to determine his guilt. This bashaw does not condemn without he has a strong belief that the circumstances will warrant the measure; but our judge can consign to infamy and distress the victim of his caprice, without any regard to truth or justice. If these judges are to be trusted in all cases, where is the boasted privilege of trial by jury, so much eulogised in this country? If all is to be trusted to the judges, why not abolish the form of trial by jury at once? A defendant is summoned to appear at court, he goes with the most perfect confidence in the justice of his cause, supposing that the truth given in evidence will acquit him; but when he comes into the court he is told that the truth cannot be given in evidence. Sit down, sir, is the language which I have frequently heard come from the bench. The man is thus deprived of his defence, and the jury are compelled to pass upon his guilt, after hearing a more powerful and eloquent harangue from the bench than it is in the power of counsel to offer; and they are told that they must give exemplary damages, on account of the audacity and temerity of this defendant, in publishing the truth, and bringing it to be recorded in the journals of the court. Is this the way that justice is to be administered in a free country? It is insisted that the judges must be made independent of the people, and then trust them with the disposal of our lives, liberty, and property. Why are these judges to be rendered independent of the people? It is that they may play the tyrant under the sanction of a constitutional law.

The Dey of Algiers will hesitate before he plays the tyrant, because if his conduct is not justifiable, he knows that strangling is his fate; but our judges are safe; they know that political strangulation cannot be enforced upon them.

In 1805, a bill passed both branches of our legislature, declaring that the truth given in evidence was a sufficient justification. The chancellor and judges, or a majority of them, constituting the council of revision, returned it with objections to the (long roll of republicans, as the chancellor has pleased to style them) assembly, and to be sure it did not pass then, but notwithstanding their objections it afterwards passed into a law. At that time our judges were considered the wisest and best of men. Every lawyer, from the most eminent barrister down to the meanest clerk in a law office, was singing praises and hallelujahs to our immaculate judiciary. Their law was gospel, and their word was law.

As we are now called on to amend our constitution, after having seen so many usurpations by our judiciary, we ought to provide against the repetition of such unwarranted abuse.

The sage and venerable council of revision, said, at that time, that men might be attacked for moral foibles or defects; that this was unjustifiable, and that the man who would presume to commit such a crime ought to be punished.

Mr. R. would be pleased, if some gentleman who belonged to that council of revision, would define moral foibles, and let us know how far they must extend before they amount to mental vice.

If the mind was sound, and the heart pure, no man in his senses would undertake to publish to the contrary, as it would fill every reader with disgust; and the leader of a political party, who should attempt such publication, would find the act recoiling upon himself.

How many libels were published for years against the sage of Monticello, and what was their effect? They recoiled on their authors, whilst the object of their slander, and the patriot of his age, became more and more endeared to his country. Whilst his venerable predecessor was surrounded by sedition laws, and sanctioned prosecutions for libels, he sunk far below the common level; but since he has retired to private life, his character has been elevated and he again stands endeared to his countrymen. When he was surrounded by all this machinery, and when his friends were enforcing the penalty of the law, by prosecuting and immuring in dungeons, from one part of the union to another—how his character sunk! From a patriot, he became a despot; and instead of a republican, he was considered a tyrant!

Are gentlemen anxious for a like state of things at the present day, and in this great and patriotic state?

We are told by the honourable Chancellor, that the character of a female may be assailed. Would not the publisher of a slander against one of the fair ones receive his punishment, whether it was true or false? In either case, let it be determined by a jury: they are the most competent to determine whether his motives are good or bad.

The Chancellor has again referred us to a case which came before Lord Mansfield, in England, when the Chevalier D'Eon was publicly represented as a female, although he appeared in the character of a French ambassador to the court of St. James'. Can the provision which we are about to make affect such a case as that? No: the action could not lie, and the evidence would not be admitted to prove the fact which should so wantonly wound the feelings of this man or woman, as the case might be. He should hope that all such actions might fail; and in all actions of assumpsit, for the recovery of wages, the evidence ought to be rejected.

Mr. R. said he should vote for the amendment offered by the gentleman from New-York, although he did not think it went far enough. He would go further, and say that when a man considered himself libelled, he should not make use of a grand jury and public officers, at public expense, to vindicate his character. Let him bring his action as for verbal slander. He should not make a proposition to that effect, because he knew the attachment to the English libel system was so great that he should not succeed if he attempted it.

Mr. Sanford said, that he conceived it to be of great importance that the freedom of speech and of the press should be secured by the constitution. The freedom of the press is the best security of public liberty; and this truth, so familiar to us all, has become an acknowledged maxim, which requires no discussion. The liberty of the press in this state, now depends upon the pleasure of the legislature. The existing law of the state upon that subject may be at any time repealed, and any other regulation abridging the rights of the citizens in this respect, may be substituted. The point now under consideration, is a very precise question. The provision reported by the select committee is, that in prosecutions for libels, the truth may be given in evidence, if it shall appear that the matter charged as libellous was published with good motives and for justifiable ends. The amendment of this provision, which he, Mr. S. proposed, was, that in all prosecutions for libels, the truth may be given in evidence to the jury, and that if it shall appear to the jury that the matter charged as a libel was published with good motives and for justifiable ends, the truth shall be a complete defence. According to the first proposition, the judge is to decide upon the motive and purpose of the person charged as a libeller. According to the second proposition, the jury are to hear the evidence, and to decide upon the motive and purpose of the publisher of the alleged libel. Mr. S. would never agree that the judge should have the sole power of deciding whether the truth of the libel should be received as a defence or not. Is a citizen prosecuted for a libel, to be tried and condemned by the judge alone? And is no evidence to be given even to that judge? According to this project, no inquiry into the truth of the case can take place, unless the judge shall first decide that the intentions of the party accused were good. How is the judge to decide upon the purpose with which the alleged libel was published? He is to hear no proof of facts, to show a purpose of good or ill; but he is to decide by

divination, or arbitrary discretion, whether the charge in question was published from good or from bad motives. The true motives of the publisher are always a matter of fact; they seldom appear from the supposed libel itself; and they often form the principal question in such prosecutions. Thus the judge is to decide the most difficult question in the cause, upon the mere perusal of the supposed libel. If the judge should think the motives of the publisher unjustifiable, all evidence of the truth of the charges would be excluded, and the party accused would be condemned, even though he might be able to prove both the purity of his motives, and the truth of his charges. If our laws allowed an appeal from the decision of a judge in such a case, to a superior court, the objection would still remain. That objection is, that the party accused is tried upon an important fact in his cause, without evidence and without a jury. It was Mr. S's. object that the whole question of libel and every part of it, should be tried and decided by a jury, upon evidence given to that jury. But it is said that indecent disclosures of facts unimportant to the public, and painful to individuals may sometimes take place. Such disclosures are often necessary, and often occur before the courts of justice in various other cases. In questions of libel, as in other cases where facts are asserted by one party, and denied by the other, the proofs must be heard in order to arrive at the justice of the case. When the publisher of an alleged libel offers to prove the truth of his charges, and his adversary objects to that proof, the suppression of the evidence offered may be justly considered to be quite as scandalous and injurious to the party complaining of the libel, and objecting to the proof, as any exposition of the truth of the charges. If the cause were to be tried by the judge alone, the proofs of all disputed facts should be heard. But the great question is, whether the liberty of the press shall depend upon judges or juries. Mr. S. entertained no unreasonable distrust of judges; but he wished to confide this great trust of protecting the freedom of the press, and deciding upon its abuses, to the juries of the state. In their hands it will be safe. Under their control, it will be efficacious, both in correcting mischief and effecting good. Here is at once the best security for the freedom of the press, and the best security against its licentiousness. Let the jury have the aid of the judge in these, as in other cases; but let the truth of the charges be proved in all these cases. Let the jury decide upon the motives of the publisher, as well as upon the truth of his charges; and with a full knowledge of all the facts of the case, pronounce him guilty or innocent.

Chancellor Kent replied to the remarks which had fallen from the gentleman from Delaware, (Mr. Root,) and the gentleman from New-York, (Mr. Sanford.) The latter gentleman was mistaken in supposing that the effect of his amendment would be, to rescue the liberty of speech and of the press from the hands of the court, and place it in the hands of the jury. Its tendency was to sanction the publication of calumnies, and to disturb the peace of society, by dragging before the public gross indecencies, which ought not to be made the subject of investigation, whether true or false. He had uniformly been in favour of the liberty of the press; and he challenged any gentleman to point to an official act in the whole course of his public life, which contravened this declaration. But he was in favour of rational freedom, not of licentiousness.

Mr. N. Williams agreed with the advocates on both sides of this question, in part; and therefore conceived himself entitled to be received by the Convention as a mediator between them. He admired the trial by jury as much as any man who heard him; indeed, he said, that mode of trial had called forth the admiration of mankind for many centuries, in most parts of the civilized world.

But, while he would extend the privileges and blessings to be derived from this excellent institution, in every possible manner that was judicious and salutary, yet he could not agree to the proposed amendment. He considered it as going to an alarming extent, and feared that it would be attended in practice with all the evils that had been so ably and feelingly depicted by the honourable and learned gentleman from Albany. The characters of private and unassuming individuals would be wantonly arraigned before the public, and the peace and happiness of families might be destroyed forever, without any possi-

ble public good being derived from it, and indeed for no other purpose than to gratify some private malice or resentment. Suppose, in such a case, the truth should be told ; was there any reason or justice in exposing even that, in a public print or writing, when there was no plausible pretext of public good ?

The distinction he would adopt would be this : Let all public officers, and all who hold themselves up for the suffrages of the people, be exposed to the severist scrutiny ; they ought to expect no less. They voluntarily set themselves up as a mark for every assailant. As to such, let the truth be given in evidence to the jury, with the utmost latitude. But in the cases he had before alluded to, he would restrain this liberty, and not suffer even the truth to be a justification for a libel against a private individual, unless it should appear to the courts that the publication emanated from good motives. This would be a safe rule. And he hoped we should always have some confidence in our courts.

With a view to this distinction, and in hopes that this amendment, in its present shape, would not be adopted, he would read to the Convention an amendment which he would then offer, in substance this : That in prosecution for any publication respecting the official conduct of men in a public capacity, or the qualifications of those who were candidates for the suffrages of the people, the truth might be given in evidence to the jury ; and if it appeared to them that the matter charged as libellous in such cases, was published with good motives, they might declare it a justification.

Mr. W. hoped that this provision would meet the approbation of every member. The like provision was to be found in the constitution of Maine, and several other states of the union, The amendment under consideration was not only different from all these, but extended the principle much beyond any of them, and even beyond, as he thought, the present statute of this state.

Mr. Buel was compelled to differ from the gentleman from Albany, (Mr. Kent.) He believed the respectability of the bar would be a sufficient barrier against the introduction into our courts of law, of cases of such a gross nature as had been mentioned.

Mr. I. Sutherland was surprised to hear such sentiments expressed, as had fallen from the gentleman from Albany, in whose integrity and purity of motives, he had the fullests confidence. The doctrines advanced by him restricted the law, as it now stood, in evidence of which Mr. S. read from the statute, and claimed that the law of this state, as it now stood, does not give to the judge the power of deciding the *quo animo* of the libel. And if such power had been assumed, it was clearly a usurpation. The judge is to determine the law, and the jury the evidence ; and to determine whether a publication was made from good motives and for justifiable ends, was matter of evidence, of which the jury only are competent to decide. He was in favour of the amendment, and thought it was placing the subject upon just grounds.

Col. Young supported the amendment. He wished to see the same principles adopted in our new constitution, as had hitherto existed in the statute. The argument which had been used, that the testimony adduced in libel suits would be of a gross nature, and have a demoralizing tendency, appeared to be without much weight ; since testimony of a grosser nature was daily heard in ordinary suits in our courts of law. He was opposed to the section as reported by the committee. The expression used by them was, "*if it be made to appear*"—to whom ? To the court, would undoubtedly be the construction of the court. Whereas the statute has it, "if on the trial of the case," &c. which was undoubtedly intended to mean on the trial by jury ; and he concurred with the gentleman last up, that if a different construction has been had, it was in violation of the existing law of the state, and should now be guarded against by a constitutional provision.

Mr. Jay observed, that if the amendment were to prevail, the unprincipled libeller might take advantage of a court of justice, and make it the very means of propagating the slander. It was desirable, therefore, for the peace and harmony of society, that that avenue for the gratification of malice should be closed. But, on the other hand, experience had shown, that too great latitude on this subject had been taken by those with whom the power was entrusted,

and if we were so liable to err, it was better that we should err on the safe side.

The gentleman from Montgomery (Mr. Dodge) had expressed his willingness to confide this power to the judges, because they were rendered removable at the will of the legislature. For that very reason, he, Mr. J., was the more inclined to deprive them of this power, lest they might be induced to swerve from the path of duty to propitiate the favour of a political dictator.

Mr. Dodge begged the indulgence of the committee whilst he should submit a few additional remarks. He hoped they would not pass over this subject without a careful investigation, as it was one of importance, and one upon which he considered the honour and character of the Convention must in some degree depend. The law of libel was one on which the good order and harmony of society must rest. Suppose, for a moment, that no such law existed. What would be the situation of public character, or the character of ourselves, our wives, or our children? We should be in the hands of any individual who should be base enough to assail us, without the means of redress.

He would wish a distinction between libels upon public, and upon private characters. When a libel was upon a public character, he would be willing to have the motives of the publisher determined by a jury; but if it was a wanton attack upon the character of a female, or a family, he would leave it in the power of the court to determine, whether the motives were good, and whether it was published for justifiable ends.

Mr. D. thought, the gentleman had reasoned unfairly on this subject, by applying the words, "good motives and justifiable ends," in a political point of view. What political good could result from the libelling of a female, a wife, or a daughter? It must be from malicious and wicked views, and for unjustifiable ends. Why, then, permit this destroyer of character to go into a detail of particulars, which can only spread far and wide the slander thus maliciously engendered? But it is said, that the partiality of judges would prevent them from judging correctly on such occasions: what experience have we had to induce us to believe that such would be the case? Are not these same judges trusted with deciding as to the relevancy of testimony in cases of murder, and other important causes? Mr. D. did not believe so much in the corruption which had been imputed to the judiciary, and circulated throughout the state and the Union, to the disgrace of the Convention. Those, who entertained such sentiments on the subject, must be expected to vote accordingly. These judges are sometimes spoken of as being so independent as to be out of the reach of all accountability; at other times, as being so dependant, as to be incompetent to judge correctly on trifling occasions. Mr. D. again alluded to the case before the Chief Justice, in which he expressed a belief that his decision was a just one, although it was *contrary to the law on that subject.* He believed there would be no danger in trusting them with the exercise of this power, as long as we trusted them with our lives and fortunes.

Col. Young replied. The gentleman from Montgomery supposed that the judiciary always had been, and always would be, upright and pure. History taught us, that judges were sometimes corrupt, as might be instanced in the character of Lord Bacon. What had been might again occur; and if our judiciary are now upright, it might not always be the case. He cited many instances where the amendment might lead to beneficial consequences. He was for referring libels to a jury, and not to the court.

Mr. Sharpe spoke briefly in favour of the amendment, and announced his intention to vote for it. The reasons assigned by the gentleman from Westchester, (Mr. Jay,) were in his view conclusive.

Messrs. Dodge and Kent made a few remarks in explanation; and Mr. N. Williams again called the attention of the Committee to the constitutions of other states.

Mr. E. Williams was satisfied that the effect of this amendment was not well understood by some of the gentlemen who had spoken on the subject, as they differed materially from him in opinion. He was desirous that the statute on this subject should be preserved; for it was one of the early efforts of his life to establish the doctrine which it contained; and he well recollected the youthful enthusiasm with which he entered upon the trial alluded to by the Honourable Gentleman from Albany, (the Chancellor,) as well as the extreme

gratification which its accomplishment afforded him. He should be opposed to disturbing this provision; but if the amendment offered by the gentleman from New-York could be made to correspond with it, he should vote for it with great pleasure. He must acknowledge, however, that on this point he differed from the gentleman from Schoharie, (Mr. Sutherland.) He apprehended it would very materially change the law of libels.

He was willing, not only that the truth should be given, when published for good motives and justifiable ends; but that it should then amount to a complete justification. The statute laid down the rule suggested by the immortal Hamilton: its verbiage was a maxim taken from the brief which he held in his hand on the occasion alluded to by the honourable chancellor.

The question is not, as has been stated by the gentleman from New-York, whether the liberty of speech and of the press shall be confided to the courts, or entrusted to the jury?

No, sir, (said Mr. W.); the question is this: Will you leave the admission or rejection of evidence to the court in cases of libel, as in all other cases; or will you, by a constitutional provision, direct that the truth of the fact published, shall always be admitted in evidence, although that truth can in no manner prove the motive good, or the end justifiable?

In the cases alluded to by the gentleman from Saratoga, (Mr. Young,) where a physician should be represented as a quack, a lawyer as a pettifogger, a merchant in good standing as a bankrupt—the fact would be admitted as a matter of course. In such cases, there would be no way of coming at the motives, or the tendency, of such publication, without going into a proof of facts; and testimony would be in such cases admitted by the court.

To lay a broad constitutional provision, compelling the court to admit the truth to be given in evidence on all occasions, would be going farther than he could consent to; and as there were undoubtedly many instances where such testimony would be extremely improper, he should oppose the amendment. He would leave this subject as the law leaves it; and in all cases where the motive might be good, and the end justifiable, he would leave the statute to compel the court to admit testimony.

Mr. W. thought it very singular, that this peculiar benefit should be claimed for libellers; that they should be the objects of the particular solicitude of the Convention. Why not leave them on the same grounds with other malefactors? He agreed with the honourable gentleman from Oneida, that he would leave the character of public men, and of candidates for public office, open to examination. He would indeed go further, and admit the truth to be given in evidence, where it was possible that the publication *might* originate from good motives and justifiable ends: but it would not be denied, that cases did occur, where there could be no possible grounds of justification, and where the public had no interest in the investigation of the truth or falsehood of the charge.

You, sir, (said Mr. W.) are a father; and should Divine Providence centre the hopes of your family in one darling son, and that son, just emerging from infancy, and ready to adorn manhood, should be consigned to an untimely grave; should this afflicting Providence be made the sport of the news-boy's song; should the bereaved father be represented as covered with moral leprosy, and this Providence displayed to the world, and to the agonized mother, as evidence of Divine chastisement for moral guilt;—would you provide by your constitution, that this libeller should prove the death-bed scene, and urge it as evidence of the father's guilt? I forbear to enlarge.

Mr. Duer replied: It was well known that the question in debate had a bearing upon a libel suit now pending before the courts of this state, in which the judge was the prosecutor. And should it be left to him to decide on the merits of the suit? He hoped the amendment would be unanimously adopted.

The question was then taken by ayes and noes, and decided in the affirmative, 97 to 8—all the members present voting in the affirmative, excepting Messrs. Dodge, Jones, Kent, Rhinelander, R. Smith, Sylvester, E. Williams, and N. Williams.

The fourth article was then passed as amended.

The fifth section relative to unreasonable searches and seizures, was read and passed without amendment.

The sixth section was read in the following words:—"The trial by jury, as heretofore enjoyed, shall remain inviolate."

Gen. Root moved to amend the section by striking out the words "*as heretofore* ENJOYED." He was not satisfied with that kind of enjoyment—for the true reading would have been *as heretofore perverted*, and he was decidedly opposed to sanctioning and perpetuating those provisions by a constitutional confirmation. The trial by jury on the circuit is about as farcical as any judicial spectacle that can be presented to the people. They are sworn to give their verdict according to evidence; but they have to do it under the opinion of the court. They rarely disobey—but if they are hardy enough to do so, the verdict is set aside, and a new trial granted. The trial by jury had become of no value, except in cases sounding in damages, and in measuring the degree of credibility of witnesses.—Even there, however, the court often interposes, and tells them, how to exercise their judgments. In criminal cases also, it had been greatly impaired, though fortunately not utterly destroyed. Mr. R. would prefer to strike out the section altogether; but if that course were not approved, he hoped his motion would prevail, and he should propose a substitute which he read, the purport of which was to retain the right of trial by jury, on the basis on which it stood under the colonial government.

Mr. Buel opposed the substitute, upon the ground that it was in the highest degree unsafe to make juries judges of the law, as well as of the fact. The principal duty of a judge was to explain and decide on points of law.

Gen. Root proposed to divide the substitute.

The motion was acquiesced in, and the first part of the substitute was read.

It was then agreed to strike out the sixth section; whereupon Mr. Root withdrew his amendment.

Mr. Nelson moved to strike out the seventh section.

The motion was modified, by moving to strike out all that part of the section, which follows the word "imposed," so as to make the seventh section read, "excessive bail shall not be required, nor excessive fines imposed."—Carried.

On motion of Mr. E. Williams, the eighth section was stricken out.

The ninth and last section was adopted without amendment.

Mr. Dodge called for the consideration of an additional section heretofore offered by him, providing that all rights not specially enumerated in the constitution, were reserved to the people.

After some discussion the motion was *lost*.

Mr. Wheaton moved to reconsider the question which had been taken on a former day, on the second section of the report of the select committee on this subject, with the view of moving to insert in the fourth line after the word "*and*," the following words: "in the land and naval forces in time of war, or which this state may keep in time of peace with the consent of Congress." Mr. W. stated, that as by the constitution of the United States, each state might raise troops, or build ships for its own defence in time of war, and might even in time of peace keep military and naval forces with the consent of Congress, it would be necessary to leave the legislature a power to provide for the discipline and government of such forces. But as the clause now stood, the legislature could not apply to the forces of the state, (except the militia in actual service,) the rules of martial law, which would be indispensably necessary for their control. The general provisions which were required for the protection of persons in civil life from arbitrary proceedings, and a summary trial and punishment, could not safely be extended to persons in the military or naval service. They must be governed by the articles of war, and by courts martial.

The motion prevailed, and the amendment was made accordingly.

Mr. Wheaton moved, that the committee be discharged from the further consideration of certain resolutions offered by him sometime since.

The resolutions offered by the gentleman from Ulster (Mr. Hunter) were read, as follows:

First. The governor hereafter to be elected, shall be at least thirty-five years of age—that he be a citizen of the United States, or of this state, and when elected, he shall have an interest in lands or tenements in the state, worth two thousand dollars, over all debts or incumbrances chargeable thereon.

Second. That senators hereafter to be elected, shall be thirty-five years of age' and be seven years a citizen of the United States, four of the last years to be an inhabitant of this state, and when elected shall have an interest in lands or tenements, in the district which he is to represent, of the value of one thousand dollars, above all debts or incumbrances chargeable thereon.

Third. That the representatives in assembly hereafter chosen, shall be at least twenty-five years of age, and be five years a citizen of this state, the three last years an inhabitant of the county he is to represent, and *during that time shall have pursued some honest calling or business for a livelihood.*

Mr. Duer called for the consideration of a resolution relative to slavery, offered by Mr. I. Sutherland. The resolution was read, as follows:

" *Resolved,* That the 4th and 32d sections of the act entitled an act relative to slaves and servants, passed March 31st, 1817, shall be unalterable by the legislature."

The resolution was supported by Messrs. Duer, Sutherland, and Buel, and opposed by Messrs. Briggs, Young, Sharpe, and Tompkins.

Mr. Russell moved to amend the resolution by striking out all that part which follows the word " resolved," and insert the following:

" That slavery in this state shall not extend beyond the 4th day of July, 1827 as now established by law."

Mr. King. A few days ago, a motion was made to shorten the time during which the remaining slaves within this state should continue to serve their masters, and to declare in the constitution, that slavery does not exist in the state.

The consequences of this declaration, would be the immediate freedom of these persons. It is known that many of them are old, and that all are without the habits which would enable them to provide for their own subsistence.

By the law of the state they will be free in 1827, and in the mean time, measures may be devised for their support and protection when emancipated—for this reason, and it was a sufficient one, the Convention negatived the motion.

It is now proposed to insert in the constitution, a provision confirming the law by which the slaves within this state will be free in 1827. By voting for this provision, those who the other day voted against immediate emancipation, will manifest their motives in doing so, to have been in kindness to the slaves, and the provision will also restrain the legislature from prolonging slavery beyond 1827.

Nothing concerning slavery is now contained in the constitution. The votes of those who with me were opposed to immediate emancipation, require no other explanation than the pernicious effects to the public, as well as to the slaves themselves, of such emancipation. On this account, therefore, the provision proposed to be inserted in the constitution is not requisite.

As a check on the legislature, it is equally unnecessary. The truth and force of public opinion on this subject, is a sufficient restraint on the legislature, and there is therefore no reason to apprehend that the legislature, from any motive, can be prevailed on to postpone the day of emancipation.

If a constitutional provision on this subject be not necessary, it should not be made, because every act of this character adopted by one of the states, does not fail to excite strong feelings in other states, which in these respects are less happy than ourselves.

Against this provision it is moreover urged, that if we omit to mention it in our constitution, it may hereafter be forgotten that slavery once existed in the state. The suggestion may appear to be more specious than solid, though it is possible that we may be as fortunate as our ancestors.

It is now the proud boast of England, that the moment a slave stands upon her soil, or breathes her air, he becomes a free man. Yet we are informed that time was, when England sold English men into foreign bondage; and that so great was the number of English youths sent for sale to the Irish market, that Ireland passed a non-importation law to keep them out. If this practice of ancient times be almost sunk in oblivion, does not the circumstance encour-

age us to hope that the enslaving of black men may hereafter be forgotten: and should we not forbear to make our constitution a record thereof?

The debate was further continued by Messrs. Jay, Young, Tompkins, and Buel, when the question was taken on the amendment offered by the gentleman from Erie, and lost.

The question then recurred on the resolution of Mr. Sutherland.

Mr. P. R. Livingston moved, that the farther consideration of the resolution be postponed till the first day of January next. Carried.

Mr. Hunter's resolutions were then read, and negatived.

The committee rose and reported.

In Convention, ordered, that the report lie on the table.

The President nominated the following members of the Convention to constitute the committee on the subject of appointments in the city of New-York, and on such other parts of the report of the committee on the appointing power, as have not been acted on, viz.

MR. RADCLIFF,	of New-York.
MR. EDWARDS,	of New-York.
MR. WHEATON,	of New-York.
MR. WENDOVER,	of New-York.
MR. VERBRYCK,	Rockland.
MR. FROST,	Putnam.
MR. TUTTLE,	Greene.
MR. BUEL,	Rensselaer.
MR. CRAMER,	Saratoga.
MR. N. WILLIAMS,	Oneida.
MR. CLYDE,	Otsego.
MR. FERRIS,	Cayuga.
MR. PUMPELLY,	Broome.

The nomination was confirmed by the Convention.

Mr. Buel offered the following resolution:

"*Resolved*, That when the Convention adjourn, it will adjourn till ten o'clock on Monday morning, and that there be two sittings a day, until further order—That the hours of meeting be ten o'clock in the morning, and half past six o'clock P. M.

On motion of Col. Young, the resolution was divided, and the first part was lost. The second part was then withdrawn by the mover. Adjourned.

MONDAY, OCTOBER 22, 1821.

The Convention assembled at the usual hour. Prayer by the Rev. Mr. De Witt. The minutes of yesterday were then read and approved.

Mr. King, chairman of the select committee, to whom was referred the proposition of Mr. Tallmadge, relative to senatorial districts, reported as follows:

"That the state shall be divided into eight districts, to be called senate districts, each of which shall choose four senators.

The first district to consist of the counties of Suffolk, Queens, Kings, Richmond, and New-York.

The second district to consist of the counties of Westchester, Putnam, Dutchess, Rockland, Orange, Ulster, and Sullivan.

The third district to consist of the counties of Greene, Columbia, Albany, Rensselaer, Schoharie, and Schenectady.

The fourth district to consist of the counties of Saratoga, Montgomery, Hamilton, Washington, Warren, Clinton, Essex, Franklin, and St. Lawrence.

The fifth district to consist of the counties of Herkimer, Oneida, Madison, Oswego, Lewis, and Jefferson.

The sixth district to consist of the counties of Delaware, Otsego, Chenango, Broome, Cortland, Tompkins, and Tioga.

The seventh district to consist of the counties of Onondaga, Cayuga, Seneca, and Ontario.

The eighth district to consist of the counties of Steuben, Livingston, Monroe, Genesee, Niagara, Erie, Allegany, Cattaraugus, and Chautauque.

And as soon as the senate shall meet after the first election to be held in pursuance of this provision, they shall cause the senators to be divided, by lot, into four classes of eight in each, and so that every district shall have one senator of each class, the classes to be numbered one, two, three and four; and the seats of the first class shall be vacated at the end of the first year, of the second class at the end of the second year, of the third class at the end of the third year, of the fourth class at the end of the fourth year, and so on continually, in order that one senator be annually elected in each senate district.

II. That a census of the inhabitants of the state, excluding aliens, paupers, convicts, and persons of colour not taxed, be taken under the direction of the legislature, in the year 1825, and at the end of every ten years thereafter; and that the senate districts shall be so altered by the legislature at the first session after the return of every census, that each senate district shall contain, as nearly as may be, an equal number of such inhabitants; which districts shall remain unaltered until the return of another census. Provided that every district shall at all times consist of contiguous territory, and that no county shall be divided in the formation of a senate district.

The annexed table dividing the state into eight senate districts, exhibits the number of inhabitants contained in each.

DISTRICT No. I.	
White persons, excluding aliens.	
Suffolk,	22,429
Queens,	18,260
Kings,	9,118
Richmond,	5,520
New-York,	107,430
	162,758
Minus,	1,948
	164,705

DISTRICT No. II.	
Westchester,	30,525
Putnam,	11,014
Rockland,	8,246
Orange,	38,944
Dutchess,	43,910
Ulster,	28,709
Sullivan,	8,559
	169,907
Plus,	5,202
	164,705

DISTRICT No. III.	
Greene,	22,144
Columbia,	36,383
Albany,	36,524
Rensselaer,	38,884
Schoharie,	22,523
Schenectady,	12,126
	168,584
Plus,	3,879
	164,705

DISTRICT No. IV.	
Saratoga,	35,167
Montgomery,	36,548
Hamilton,	1,243
Washington,	38,194
Warren,	9,327
Clinton,	11,011
Essex,	12,591
Franklin,	4,244
St. Lawrence,	15,025
	164,350
Minus,	1,355
	164,705

DISTRICT No. V.	
Herkimer,	30,432
Oneida,	49,675
Madison,	31,949
Oswego,	12,211
Lewis,	9,960
Jefferson,	32,025
	165,352
Plus,	647
	164,705

DISTRICT No. VI.	
Delaware,	25,891
Otsego,	44,284
Chenango,	31,007
Broome,	14,204
Cortland,	16,435
Tompkins,	20,589
Tioga,	16,776
	169,186
Plus,	4,481
	164,705

DISTRICT No. VII.	
Onondaga,	41,122
Cayuga,	38,447
Seneca,	23,318
Ontario,	60,616
	163,505
Minus,	1,200
	164,705

DISTRICT No. VIII.	
Steuben,	21,658
Livingston,	18,253
Monroe,	26,553
Genesee,	39,788
Niagara and Erie,	22,838
Allegany,	9,271
Cattaraugus,	4,084
Chautauque,	12,555
	155,000
Minus,	9,705
	164,705

NOTE.—In four of the districts, the deficiency of numbers amounts to 13,209. In four others, the overplus of numbers amounts to 14,209.

The white inhabitants of the state (excluding aliens) are 1,317,632—dividing this number by 32, (the number of senators,) gives 41,176, as the requisite number for the election of one senator. A district entitled to choose four senators, must therefore contain, as nearly as may be, 164,705 inhabitants.

A small inaccuracy in the number of the inhabitants of this state, will arise by the addition of persons of colour, who are freeholders, and the exclusion of paupers and convicts."

On motion of Mr. KING, the report was referred to a committee of the whole, and the usual number of copies ordered to be printed.

MR. YATES offered the following resolution:

Resolved, That a committee be appointed to arrange that part of the constitution which has been acted on, or may hereafter be acted on, and to report the same to this convention, and that the said committee consist of members.

His object was to save time. The committee might now be employed in digesting those amendments, which had passed in committee of the whole.

The resolution was opposed by Messrs. Radcliff and Fairlie, upon the ground that nothing definite had yet been fixed.

On motion of Col. YOUNG, the resolution was ordered to lie on the table.

THE JUDICIAL DEPARTMENT.

On motion of Mr. RADCLIFF, the Convention then resolved itself into a committee of the whole, on the judicial department. Mr. Fairlie in the chair.

The report of the committee was read by the secretary.

MR. MUNRO begged the indulgence of the committee, while he stated, as briefly as possible, the principles and views by which the select committee were governed in making their report. That committee were aware of the magnitude of the subject assigned to them, and although they had endeavoured to discharge the important duties which devolved upon them, they were not insensible of the imperfection of the result of their labours. It might, however, be proper to state, that the committee were unanimous in the report, with the exception of one member, the gentleman from Washington, (Mr. Wheeler.) The general principle upon which the committee had proceeded, was to recommend as few radical alterations in our judicial system as possible, deeming it imprudent and unsafe to give up what had been tried by a long experience, for hazardous innovations and experiments.

They had considered it wise and prudent to preserve, as entire as possible, the present judiciary system; but they were aware that the chancery system had increased so much, that it was out of the power of almost any man to attend to it. Perhaps no man in the state, except the present chancellor, could do the duties of that office at the present time. It has been with the most rigorous exertion and indefatigable labour, that he has continued to preserve the usefulness and character of that court. He has reduced it to a system which does honour to the state and to himself: but it has now arrived at a period in

business, which renders it almost impossible for him longer to discharge its arduous labours. The business is still rapidly increasing. The following is a statement from the honourable the chancellor, respecting the amount of business done in that court:

"In 1821, there have been two terms held, one in Albany, and one in New-York. The one had one hundred and thirty-seven, and the other had one hundred and twenty-eight, causes set down for hearing, making two hundred and sixty-five causes, for two out of four terms in the year. There are a considerable number of cases submitted upon pleadings and proofs in vacation, and probably for the present year, there will be four hundred causes in chancery brought upon the merits. All that have been hitherto brought to a hearing or submitted, are decided. There is no cause ready for hearing that has not been heard and decided."

"In 1820, there were in the two terms in New-York, three hundred and ninety causes set down for hearing on merits, and disposed of—say one hundred and ten more in the said terms in Albany and in the vacation, making five hundred causes that year.

"1819, there were two hundred and twenty-four causes at the two New-York terms set down for hearing.

"In 1817, there were, in the two New-York terms only, set down for hearing, two hundred and eighty causes.

In 1814, there were in these two terms in New-York only one hundred and twenty-three.

"The business of the court appears to be in a state of rapid increase, and the solicitors and counsellors of the chancery bar are multiplying very fast. Chancery business, or what may arise on special motions weekly, is also greatly increasing; and, in my humble opinion, the chancellor will very soon require relief, by one or more persons to the south and west, to do what may be considered as the special or non-enumerated business of the court, and also its incidental business, as cases of infants, and sales of their real estates, and lunacy, drunkenness, injunctions, disclosures, &c. Such business is pouring in daily, upon the chancellor, and ever since the first of last December, he has been *incessantly* and *laboriously* occupied to keep down and despatch the business of the term, and of the special and multiplied matter."

From a knowledge possessed by the members of the select committee, together with this statement from the Chancellor, it was deemed necessary to provide in some measure for the future discharge of the duties of that office, other than by an individual. They concluded that to establish the office of vice chancellor in or near the city of New-York, and leave it in the power of the legislature to establish, whenever it shall be deemed necessary, one or more vice chancellors in the western part of the state, would be putting that court in a situation where it might stand.

The committee were of the opinion, that it was impossible to establish any competent system without some additional expense; and as this plan could be adopted without any very great expense, they thought best to engraft it into the original stalk, which was planted in this state at a very early day, and had continued to grow and flourish till the present time.

The business in the supreme court has become so extensive, that it is not in the power of the judges to discharge it. In the city of New-York, not more than one third of the causes are usually tried. One half or two-thirds of the business is necessarily passed over. To remedy this, the committee have thought proper to recommend the establishment of a supreme court of common pleas, to consist of a chief justice and three assistant justices; which, together with all the judges of the supreme court, making eight in all, would be competent to discharge all the business at the circuits. This would make an increase of only three beyond the present number, and, according to the present salaries given, would add to the expenditure but nine thousand dollars per annum, which he thought would be amply repaid to the state by the important benefits it would confer.

The next court that the committee had recommended to be altered, was the court of common pleas. We purpose to take from the surrogates the powers

now given to them, and repose it in the county courts. By a communication he had received from the surrogate's office in the city of New-York, it appeared that at one term there were one hundred and twenty-seven causes, and in the other one hundred and twenty-eight, set down for argument. They had not obtained very ample information from the country, but it was pretty evident, that a reform was necessary; and the committee, without a pertinacious adherence to their own system, had adopted the course they thought most expedient for the public good.

GEN. ROOT announced his intention to offer an amendment to the first section. His objections to the report were, that it went too much into detail. General principles should be adopted, and the rest left to the discretion and regulation of the legislature. As some gentlemen appeared to be averse to engrafting on substitutes, he would preserve a part of the section as reported, as the original trunk on which amendments might be engrafted. He therefore proposed to strike out all that part of the first section which follows the word "vested," and insert the following;

"In a court for the trial of impeachments and the correction of errors, to consist of the president of the senate, and the senators; in a supreme court, to consist of a chief justice, and not more than four, nor less than two, associate justices; in circuit courts, and courts of common pleas, and in justices of the peace, and in such other courts, subordinate to the supreme court, as the legislature may from time to time establish. The state shall be divided into a convenient number of districts, subject to alteration, as the public good may require; and for each, a circuit judge shall be appointed: He shall have the same powers as a judge of the supreme court, at his chambers: He shall have the power to try issues, joined in the supreme court; to preside in courts of oyer and terminer and jail delivery; and, if required by law, to preside in courts of common pleas and general sessions of the peace. The supreme court, shall have jurisdiction, in all cases, in law and equity; and the legislature may, in their discretion, vest chancery powers in other courts of subordinate jurisdiction: *Provided however*, That the court of chancery, as at present organized, shall continue, until the legislature shall otherwise direct."

MR. I. SUTHERLAND wished the proposition might be first taken on striking out, as that would test the sense of the house on the abolition of the court of chancery and the supreme court.

MR. MUNRO spoke against the amendment. It was complex, and had a bearing upon all the subsequent parts of the report. It could not be called an amendment to the first section, since it embraced distinct propositions, which, if adopted, must virtually annul the other provisions recommended by the committee.

MR. I. SUTHERLAND proposed to divide the substitute, and first take the question on strking out, or abolishing the court of chancery.

COL. YOUNG rose and commenced speaking in favour of the amendment, when he was called to order by the gentleman from Otsego (Mr. Van Buren.)

GEN. ROOT contended, that the gentleman from Saratoga (Mr. Young) was in order; and the question was referred to the chairman, who decided that the gentleman on the floor was in order, and might proceed.

COL. YOUNG did not understand that the gentleman from Delaware was disposed to abolish the supreme court. The court of chancery he would be willing to leave for the legislature to determine upon, and if they see fit it might be put into the hands of the supreme court; although he was confident the duties of the court of chancery were never more faithfully, nor more ably discharged than at the present time.

With respect to the appointment of vice-chancellors, he was opposed to it. He did not believe the business of this state would even require two courts of equal jurisdiction in civil affairs. In Great Britain they have the court of King's Bench, and the Court of Common Pleas, and these courts do the business of that country. When we consider the business that must necessarily be done in that country, with all its internal and external commerce, and that it is done

by these two courts, we may naturally conclude that the business of this state will never be so great as to require more than the courts which we have now established.

Should we institute two courts of equal jurisdiction, the one which should be considered the best in public estimation would get all the business, and the other would be a bill of expense without any benefit. It being once fixed in the constitution, we could not get rid of it, however useless it might be.

He would have the state divided into districts, and in each district have a circuit judge, from whose court an appeal might be made to the supreme court of the state. It has been said, that the court of chancery was established on the first settlement of the country. This was a mistake—the state was first settled by the Dutch, who did not establish a court of chancery. At the time when the court was established, the inhabitants of the colony all resided in that part now composing the southern and middle districts of the state. The contiguity of the inhabitants rendered it convenient to hold the courts in one place; but now they are scattered over this extensive state, so that it is extremely inconvenient and expensive. If a man in Cattaraugus has occasion to commence a suit in chancery, he must come to Albany or New-York to employ counsel; for as all the business is done in these places, the country lawyers are not sufficiently skilled in the business to manage a cause to advantage. Mr. Y. was anxious that equity as well as law should be carried into every county in the state, and by the amendment of the gentleman from Delaware, it would be effected. This plan had been tried with success in smaller states than this, and he presumed it would be found beneficial in this state.

With a trifling amendment, he should be in favour of the proposition of the gentleman from Delaware; notwithstanding, the select committee who reported on that subject, were entitled to the thanks of the Convention for their industry and research. Their report, however, he considered too complicated—it was more so than any judicial system in the Union; and it was long enough for a constitution itself. The report descends too much into details; and we are told that it will be best to build upon that report, when one great objection is, that it is too long already.

He was willing to leave the legislature to exercise some discretion on this subject, and if they see fit, he would be willing to have the power given to the other courts. Objections would probably be raised to this plan, but it was the plan of the general government of the United States. In this state, the decisions in chancery are sometimes reviewed by the judges of our supreme court in the court of errors. A person who is capable of judging in the supreme court, is capable of judging in equity. Our present chancellor was taken from the bench of the supreme court, and has he not given perfect satisfaction? No complaint has ever been made as to his faithful discharge of duty; but let the power be given to the other courts, and then equity as well as law may be carried home to the doors of the people in every county in the state. He hoped the amendment would prevail.

Mr. Radcliff observed, that the committee undoubtedly deserved great credit for their industry and patient investigation; and his objection to the result of their labours, was, that they had done too much, and rendered their report too complicated. He pointed out some radical defects, which, in his opinion, existed in our present judicial system; one of which was, the union of the judiciary with the legislative department in the court of errors. He was for having them kept perfectly distinct, and for excluding from the court of errors the chancellor and the judges of the supreme court. With regard to the court of chancery, he was opposed to any provision in the constitution, either for its establishment or abolition. We ought not to tie up the hands of the legislature on this subject, but leave it discretionary with that department to retain or abolish it. There were many arguments in favour of abolishing the court of chancery, although he would wish to see chancery powers lodged somewhere. In Great-Britan, the chancery court was an immense power, wielded by the king; and in this country it was enormous, and unlike any thing else in our government and institutions. It was inexpedient that such powers should be lodged in any individual, whatever might be his talents and integri-

ty. Mr. R. explained the constitution of the several states, in regard to the regulation of chancery powers. The constitution of the United States was an example of blending the administration of law and chancery powers in the same tribunal. That example had been followed by Maine, New-Hampshire, Massachusetts, Connecticut, Vermont, Pennsylvania, Georgia, Louisiana, Kentucky, Ohio, Tennessee, Mississippi, Indiana, and Illinois. In some of these, particularly in New-Hampshire, the special designation of these powers was referred to the legislature; in the others, chancery and law powers were blended. In New-Jersey, Delaware, Maryland, North-Carolina, and South-Carolina, those powers were exercised by different bodies, and in Virginia they had judges of the court of chancery. The states that have separated these powers, are usually those whose constitutions were formed at an early period, and who borrowed their ideas of jurisprudence from England.

Mr. Wheaton said, that having had the honour of being a member of the select committee on this part of the constitution, he would take the liberty of stating the reasons why the report had necessarily run into a length of detail, which to some gentlemen had appeared inconvenient and improper. If there was any subject in which a free people had a deep interest, it was the administration of justice. The judiciary was to be considered as one of the co-ordinate departments of the government. It was to be independent of them, as they were independent of each other. But if the discretion of creating courts was to be reposed in the legislature, either entirely or partially, to the same degree, the judicial must inevitably be made dependent on the legislative department. Such had been the practical construction put on the constitution of the United States. By the terms of that constitution, the judicial power of the Union is vested in a supreme court, *and in such inferiour courts as the Congress may ordain and establish.* What had been the consequence under that government? Formerly, as now, the judges of the supreme court, uniting with the district judges in the different states, constituted the circuit court of the Union. In 1800, it was thought expedient by Congress to confine the judges of the supreme court to their constitutional duties as an appellate tribunal. Soon afterwards a change of administration took place; the law establishing these district courts was repealed; and the judges legislated out of office, in apparent violation of the constitution, which declared that all the judges should hold their offices during good behaviour. He was then too young to be capable of forming any opinion on the question whether the judges could be thus deprived of their offices, although there was much to be said on both sides of the controversy. But all would agree, that in framing the amendments which we were about to add to our venerable constitution, it was desirable to avoid such a question, and to put the judicial department beyond the control of the legislative in this respect. How else could we avoid continual fluctuations in the organization of our courts? He who can create, can destroy: and if it was to be left to the legislature to establish any tribunals of law and equity, even if they were inferior to the supreme court, the judiciary would be the mere creature and instrument of the legislature and executive.

According to the amendment proposed by the gentleman from Delaware, the jurisdiction even of the supreme court, was left undefined, and consequently the whole matter was delivered over to legislative discretion.

His colleague from New-York (Mr. Radcliff,) had scruples about going quite so far as the gentleman from Delaware, and would not shut the doors of the court of errors against the chancellor and judges, but would compel them to attend in order to be *examined* upon such questions of law as might arise. His colleague had stated the house of lords in England as an example of such an arrangement. But every man who reads the reports of the cases determined in parliament, knew that in point of fact the lay lords seldom or never attended the house when it was transacting judicial business. The law lords, (as they were called,) including the lord chancellor, the chief justice of the king's bench, who was generally a peer, and certain ex-chancellors of Great Britain or Ireland, together with the judges in practice, constituted the tribunal of the last resort in that country. So that an imitation of this institution would produce a court of errors precisely opposite in its composition from that which his colleague seemed to think desirable,

The gentleman from Saratoga (Mr. Young,) had fallen into an error of a different kind. He had supposed that only two superior courts of common law and eight judges administered the whole justice of England in that department; and he had objected to the report of the select committee, as being too complicated and requiring a greater number of courts and judges than the business of this state now demanded, or would at any future period call for. But the fact was, that twelve judges, together with fifteen or twenty *nisi prius* commissioners, were kept constantly employed in administering the common law justice of that country, besides the courts of Wales and of the counties palatine: and certainly, when it was considered what this state now was, and what it was ultimately destined to become in point of wealth and population, there could be no doubt we should require the number of judges provided for in the report.

Mr. Radcliff explained. He did not intend to have the judiciary dependent on the legislature. He was desirous to go as far as they could in fixing the outlines of a system, without going so far into detail as to prevent the legislature from making such alterations as the state of society might hereafter require. He was disposed to fix irrevocably such courts as it could be foreseen would always be necessary. But with regard to the proper deposit of chancery power, it was a great question, although not a new one. He therefore thought it a proper subject for legislation, to be disposed of as the exigencies of society might require.

Mr. R. did not quote New-Hampshire as a precedent; but rather to show that the question of the proper depository of chancery powers was not uniformly settled.

Mr. Munro defended the report at length, and replied to the remarks which had fallen from the gentleman from New-York, (Mr. Radcliff) who had thought proper to condemn the report. He called on that gentleman to assign the reasons, on which his objections to the report were grounded; and to point out the evils we had experienced from the court of chancery.

Gen. Root said, that gentlemen had called for a division of the subject, and he moved that the question might be first taken on the abolition of the court of chancery.

He was not, he said, so absurd as to deny that chancery powers should be vested somewhere. He was disposed to *transfer* chancery duties—not to *abolish* them. It had been said that we should be cautious, and not be hurried by our dislikes of particular persons who fill the offices of chancellor and judges, to abrogate a valuable system. It was not the person, but the office, to which his remarks would be directed; and it was because the office had been so ably filled by the present incumbent, that he feared the personal popularity of that officer would prevent its prostration.

Mr. R. then proceeded to examine the plan proposed by the committee. The establishment of a court of common pleas, possessing co-ordinate and commensurate jurisdiction with the supreme court, was in his view absurd. The idea must have been taken from the court of common pleas in England, which was instituted for the adjudication of civil causes, and has no criminal jurisdiction whatever. The court of king's bench was instituted originally for the trial of causes in which the crown was concerned. By a fiction of law, they brought the defendant into court, and by an *ac etiam*, usurped the proper powers of the court of common pleas. *Ac etiam* sounds well enough in the ears of lawyers: but common people could hardly understand it. The barons of the exchequer were appointed to take care of the royal revenues; and here, by another charming fiction, by a *quo minus*, the defendant in a civil suit, is brought into their courts. In this way they had *ac etiam'd* and *quo minus'd* the whole realm into their grasp. He wished to have the powers of our courts distinctly known and defined. But we are next presented with a *nisi prius* court. What's that?—a constitutional provision that a certain court shall try a cause, *unless* somebody else shall sooner come and try it. He had rather have a constitution in the English language.

Mr. R. proceeded in detail to point out the objectionable points in the first section, and to shew by comparison the superiority of the system he had proposed. His substitute would remedy the evil of an accumulation of untried

causes, for it would authorise such an extension of the court as convenience might require. The judges would not have to ride post through the state; but the administration of justice would be brought home to every man's door, without unnecessary expense or delay.

Col. Young offered the following proviso to the amendment. "Provided, however, that the court of chancery, as at present organized, shall continue until the legislature shall otherwise direct."

Gen. Root assented to the proposition of Col. Young.

Chancellor Kent was opposed to the abolition of the court of chancery, and vesting its powers in the supreme court. As the constitutional limitation of his term of office would arrive before the amendment would probably go into operation if adopted, he thought the committee would exempt him from the imputation of acting under the influence of personal considerations, and he stated in a few words his objections to the propositions offered by the gentleman from Delaware.

The court of chancery had been a distinct tribunal from the first settlement of the colony by the English, and it had become too deeply incorporated in our institutions and jurisprudence, to be now destroyed as an independent jurisdiction, without the utmost inconvenience and hazard. It was wisest and safest to have the systems of law and equity deposited in separate and distinct courts. The systems were essentially different in their character, and relations, and objects; and each of them required a distinct preparation, and study, and qualifications. It would be dangerous, and contrary to the cautious policy of a free government, to accumulate all the powers of each system in one tribunal —we should run the hazard of having equity so intermixed with law, and law so intermixed with equity, as to lose the certainty and distinct character of each.

On the continent of Europe, the powers of law and equity were united in the same court; and so were they in Scotland; but the courts in these countries followed the civil law, and were strangers to the trial by jury. The subjects of equity jurisdiction were not proper for a jury, and therefore they ought to reside in a separate tribunal. Trusts were one great head of equity power, and they related not only to private trusts created by deed, but to the duties of public trustees, such as the trustees of corporate bodies, or commercial, charitable, and religious institutions. Such complicated inquiries and investigations, never could be brought in a compact and intelligible shape before a jury. Under the same head, executors, administrators, and guardians, and factors, and agents, were included, and all the minute and vast inquiries connected with such trusts. Infants, feme coverts, and lunatics, were likewise under the special care and superindence of chancery, and a court of common law was incompetent to deal with such matters. The specific performance of contracts was another fruitful, and very prolific and growing subject of the powers and business of a court of equity. So also, cases of fraud, and accident, and mistake, naturally fell within the same jurisdiction. The head of accounts had been noticed by the gentleman from New-York, (Mr. Radcliff,) as opening a vast field for equity cognizance, and he was a little surprized that the gentleman should consider that head as dangerous in a separate court of equity. Nothing is more complicated than the investigation and settlement of accounts between partners in trade, and between factors and agents and their principals. It would be impossible, in most cases, to bring such cases within the reach of a jury, and a jury would be utterly incompetent to bestow the time and labour requisite to examine them. Courts of law always refer such matters to reference, with or without the consent of parties, and the investigation can be as well, and perhaps much better, conducted before a master under the direction of the chancellor. The masters in chancery are sworn officers, whose habits, and study, and knowledge, fit and prepare them for such duties. The business is made a matter of distinct profession and science, and they will usually have the skill and capacity which such an exclusive employment creates. Another eminent advantage attending such investigations in chancery, is, that the parties can be compelled to answer upon oath to all the sifting inquiries that may be necessary to draw forth the truth.

The practice in some of the other states had been referred to in favour of the union of equity and law in the same court. But in several of the states they were distinct as with us; and in South-Carolina, for instance, we are told by very high authority, that the question had been fully discussed in their legislature, whether the tribunals should be distinct or blended, and that it had resulted in a general conviction that it was most wise and expedient to keep them separate. In the courts of the United States, chancery and common law powers were blended, but those courts had only a very partial and limited jurisdiction in matters of equity cognizance, because those matters were generally local, and fell exclusively within the cognizance of the state courts. There was not business enough belonging to the national courts, to justify the establishment of distinct equity tribunals. There was no serious force, therefore, in the precedent to be drawn from those courts, and he was persuaded, from circumstances which he need not now detail, that those courts felt much embarrassment in the management of the few equity cases that arose before them. He was persuaded that an equity system of jurisprudence never could be reared and perfected by any tribunal, loaded at the same time with the cumbersome duties of a court of law.

The mode of taking testimony in chancery had been made a great objection to the system, but would that be remedied by transferring the powers of equity to a court of law? It would be unjustifiable to bring the subjects in general before a jury, and if the supreme court was to be vested with equity powers, the court never could examine the witnesses themselves. This subject had been discussed and considered in a report which he had the honour of submitting to the senate last February, on a reference to him of a bill then pending before that house, and as the case was probably new to most of the committee, he would beg leave to read from the journals of the senate the material parts of that report. Here the Chancellor read the report in the words following:

To the Honourable the Senate of the State of New-York.

The Chancellor, in compliance with the resolution of the honourable the Senate, of the 27th ultimo, submitting to his consideration the bill, entitled, "An act to alter the mode of taking evidence in the Court of Chancery," respecting his opinion thereon,

RESPECTFULLY REPORTS,

That the bill provides for a very material alteration in the mode of taking testimony in Chancery. The substance of the bill is, that the Chancellor shall either personally examine, *ore tenus*, witnesses in Chancery, or appoint some proper officer or person to do it, and that the officer or person to be appointed, shall take notes of the testimony, in the manner practised by a judge at *Nisi Prius*, and report the same to the Chancellor: and that it shall be lawful for the parties by their counsel to attend every such examination, and put questions, *ore tenus*, and also to examine witnesses, at the same time, touching the competency or credibility of any other witness, and to require points or exceptions, made at the examination, to be reserved for the decision of the Chancellor, who may thereupon direct such further examinations as the case may require; and that it shall be lawful for the officer or other person, taking the examination, to adjourn the same to any other day, so as to enable each party to be fully prepared with testimony.

The first observation that naturally occurs upon the perusal of the bill, is, that it would be entirely out of the power of the Chancellor to take examinations himself, in proper person, and at the same time perform the other duties of his office. He is satisfied, from his own experience, that the business of hearing and deciding on special applications, which are daily, and almost hourly, occurring, and of hearing and deciding on causes, regularly prepared and set down for hearing upon pleadings and proofs, requires his whole time and attention. It is further to be observed, that the business of the court is constantly and rapidly increasing, and extending itself in every direction over the state. It would require at least eight or ten chancellors to take all the examinations in person, and at the same time hear and decide all causes upon the merits, with sufficient deliberation, study, accuracy, and despatch.

The Chancellor, therefore, thinks, that no reliance can be placed on that provision in the bill, and that it ought to be put entirely out of consideration.

The essential alteration in the present practice, which the bill contemplates, is to permit examinations to be taken, *viva voce*, before the examiner or other officer, in the presence of parties or their counsel, and with liberty to impeach at pleasure the competency or credit of the witnesses, and of bringing up witnesses on each side, until all the testimony is taken which either party may think proper to furnish.

To understand the full force and effect of this alteration, it may be proper to notice, briefly, the present mode of taking testimony.

After a cause is at issue, a rule is entered for the parties to produce their proofs. Each party is fully apprized by the bill and answer of the claims and pretensions of the other. The bill and answer contain a particular and minute history of the matters in controversy, and this prevents all possible surprize, and each party sufficiently knows what he is required to prove, and what he ought to repel. Interrogatories, or fit and pertinent questions, are then prepared by the counsel of each party, to be put to their respective witnesses. These interrogatories are founded upon the bill and answer, and cannot well be misapplied. A copy of the interrogatories, and of the names and places of abode of the witnesses, and the time and place of the examination, and the name of the examiner, are all duly served on the opposite party, who proposes if he pleases cross interrogatories, to be put to the same witnesses. The opposite party takes the same steps and gives the same notice in respect to his witnesses. These examinations are either taken before a regular examiner, appointed by the Council of Appointment, or if the examiner be not within a convenient distance, or either party chooses otherwise, he may under the rules of the court sue out a commission, and have the examinations taken before two or more commissioners to be selected by the parties, in a mode provided. At the time and place appointed, the examiner, or commissioners, examine each witness separately upon the questions furnished them, and the depositions of the witnesses are carefully reduced to writing, and read over and subscribed by them, and the examiner proceeds in this course for days or for weeks together, as the case may require, until all the testimony is taken and duly closed. A rule for publication is then entered, and the depositions are made public, and each party inspects them and takes copies, and if they can impeach the competency or credit of any witness, who has been examined, they have an opportunity to do it in a fair and regular manner. If any irregularity has taken place in the course of the examination, or any improper questions put, the depositions affected by them will be suppressed, and all possible care is taken by the rules and practice of the court, to have the testimony fairly and fully taken, and freed from all impertinent, or improper matter.

An objection which has often been made to this mode of taking proof is, that it deprives the chancellor of the benefit of an oral examination and inspection of the witnesses. But this objection cannot be removed entirely, because it is impossible for the chancellor to be able to take the examinations in person. The objection, however, is in a very considerable degree, if not in all essential respects, removed by the practice of awarding a feigned issue, and directing the question to be tried by a jury, at one of the circuit courts, when the cause resolves itself into a mere matter of fact, and depends chiefly on the credibility of witnesses. This is done in all cases under the statute concerning divorces, when the fact of adultery is denied, and so it is in all cases, where the cause turns upon the competency of a testator in making his will. It may be done in any other case, in which the fact disputed is doubtful, and the chancellor cannot otherwise arrive at a satisfactory conclusion.

Another objection to this mode of taking testimony is sometimes raised, and it is one which seems principally within the purview of the present bill. The objection is, that the parties are not present by their counsel, to question and cross-examine the witnesses, *viva voce*, and by discovery of what is proved on one side, to be enabled to meet it by countervailing proof on the other.

It is worthy of much consideration, whether an alteration of the practice in this respect, would not be productive of more evil than good. The Chancellor is of opinion that the present practice would not have stood so long the test of experience, if it had not been founded upon very solid reasons, and he apprehends that the alteration proposed by the bill, would be attended with injurious consequences.

In the first place, it would increase the costs of a suit. The drawing of the interrogatories is a trifling expense, compared to what the attendance of counsel upon every such examination would be. The extra expense of counsel, in every important case, is much more burdensome to the suitor, than the taxable costs. The very presence of counsel would render every such examination, more or less litigious. These examinations, in every important cause, (and chancery causes are usually important and embrace a great variety of complicated matter,) would necessarily consume weeks, and would be protracted by the thousand interrogatories of counsel, by objections to questions put, by argument and discussion, by exceptions taken, and points reserved, and by the want of the presence of a judge of sufficient weight of character and authority to dispel doubts and to inspire respect.

These open, public examinations, conducted by counsel, would also greatly retard the progress of the suit. As examinations are now had, each party selects his witnesses upon his previous knowledge of the case, and is under no temptation to hunt after, or fabricate testimony to attact his adversary's proof, and to prop up the weak sides of his own case. He brings forward what his counsel inform him to be material proof, and the interrogatories are all framed to meet the very matters of fact detailed in the bill and answer. Each party stands on equal ground. There is no opportunity for speculating on each other's proof, and of running a race of diligence, day after day, and week after week, in supplying fresh proof to make and resist attacts, and to exhaust each other by an obstinate and irritated litigation. Under the present practice, the parties are kept undisturbed and tranquil, and have nothing else to do but quietly to collect proof at once, to support their respective allegations. But if the parties, by their counsel, are permitted to go before the examiner, the passions would be instantly excited, and a vexatious inquiry commenced. Adjournment upon adjournment, would necessarily be required to seek for countervailing proof, and examinations would become excessively tedious. Delays would be greatly and unavoidably promoted by the permission which the bill gives the counsel to raise points and tender exceptions, which the examiner is to refer to the chancellor. Each of these exceptions would require a regular hearing and discussion before him ; and this would often lead to a renewed examination. The burdensome and prolonged examinations upon references before a master, where counsel attend, and each party enters into such an examination by witnesses, as he thinks proper, afford a sample of what might be usually expected under the provisions of the bill. Some of those examinations before a master have been known to have consumed months, and to have been most laborious and distressing to all concerned.

Another and a more serious objection to the new mode of examination proposed, is the temptation it would hold out to abuse. The parties, or their more sagacious counsel, would be enabled very early to detect the weak parts of their adversary's proof, or their own, and they could be induced to seek, upon adjournment, for further testimony to meet the pressure and exigency of the case. It is to guard against this species of abuse that examinations in chief are rarely permitted, after the testimony on each side has been disclosed by publication, and it is upon the same principle, that courts of law will not grant a new trial, merely to enable a party to accumulate testimony on any given point, or to meet that which was taken on the opposite side. The language of the courts of law is, that it would tend to introduce fraud and purjury, by affording an opportunity to tamper with witnesses, and by taxing the ingenuity of a party, after the discovery of his adversary's strength, to supply all deficiencies of testimony on his side. It is for the same reason, that a witness who has been once examined in chief, cannot be re-examined before a master without a special order ; and even then, not to any matter to which he had been before examined. In trials at common law, before a jury, the mischief cannot well arise, because the cause is heard, and the verdict taken at one sitting, and all undue opportunity for ranging at large and getting up suppletory proof, is precluded.

The practice which is now in use on this subject, has continued the same since our revolution, and it was taken from the *English* practice, where it had continued for ages without the discovery of any serious evil. It has such a weight of experience in its favour, and has become so improved and perfected by time, that this circumstance alone, must give it immense advantages over every untried innovation. The same mode of examination was recognized and guarded by the rules which the wisdom of lord *Bacon* established, for the government of the

court of chancery, as early as the time of king *James* I.; and the practice stands to this day almost precisely as he declared it. Even during the period of the English commonwealth, when every part of the English constitution, except their jurisprudence, was laid in the dust, and when the commissioners, who took the place of the chancellor, undertook the reformation of the court, the present mode of examination of witnesses was preserved, and made an interesting part of a special ordinance ; and as evidence of the uniform sense, supported by the long experience of the English courts on this subject, it has become an axiom in their equity policy, that no proceeding can take place, of more dangerous import, than to permit parties to make out evidence by piece-meal, and after a discovery of the weakness of testimony, to allow them an opportunity to look out for witnesses to supply the deficiency. Such a course of practice leads to perjury and vexation.

The Chancellor, during the period that he has had the honour to preside in the court of equity, does not recollect of ever hearing a complaint or suggestion, that the present mode of taking testimony had been abused, to the injury of private right, or that each party had not been able to take all the proof that a reasonable diligence might have procured, and the nature of the case required. He has never been led, even in a single instance, to suspect, that a cause was lost or injured, or the truth suppressed, from the want of a public oral examination in the presence of the parties. It is extremely rare that a feigned issue has been called for, or that any serious difficulty has occurred after a due examination of the proofs, in ascertaining, to his entire satisfaction, the real justice of the case. The Chancellor is therefore enabled to add his own experience to the accumulated experience of the two last centuries, in favour of the sufficiency, the safety, and the wisdom of the mode in taking testimony which has been pursued. If the present mode be expensive (and it is perfectly Utopian to suppose that important causes can be carried on without very considerable expense) the mode proposed would increase that expense. It would render examinations much more tedious and burdensome, both to suitors and to the profession ; and it would, as he greatly fears, lead to abuses, hazardous to public morals, and dangerous to the reputation of the court.

The Chancellor respectfully submits these objections to the candour and wisdom of the Senate. He has made them with the utmost frankness, and with no wishes on the subject, distinct from his sense of the public welfare. He begs leave at the same time to express his dutiful and greateful acknowledgments for the confidence which the resolution under which he has acted implies, and it is his constant endeavour, by a faithful discharge of his public trust, to deserve that confidence.

All which is respectfully submitted,

JAMES KENT.

It was well observed the other day, (continued the Chancellor,) by the gentleman from Orange (Mr. Duer) that to innovate is not always to reform. The maxim was derived from the wisdom of Lord Bacon ; and why should we break up the foundations of a court which has stood so long, and received such marks of public confidence ? The business of the court has been for some time past, rapidly increasing, and that is evidence of the general conviction of its utility. We ought to cherish the ancient and venerable institutions of the state. Those states which have not a separate court of chancery, feel the want of one. The general language of the experienced and enlightened jurists of our country is in favour of the judicial establishments in this state, and their success and character have received the flattering tribute of their approbation. The measure proposed would essentially injure our character as a wise and reflecting people.

Excuse me for the interest which I take on this subject. It is not personal. I am soon to retire from public life, and the amendment would not affect the short remaining term of my office. But I wish well to our courts, and I have a still higher wish for the welfare of my native state. My prayer is, that *length of days may be in her right hand, and in her left hand riches and honour.*

Mr. I. Sutherland remarked, that with respect to innovations, they were not at all chargeable to the select committee. They were to be found, not in the report, but in the substitute offered by the gentleman from Delaware. The

committee were disposed to establish—not to destroy. This was emphatically the case with respect to the court of chancery. The committee had proposed not to increase the *powers* but the *officers* of the court. They had not recommended to put upon the community any court which it is not already burthened or blessed with. The gentleman from Delaware admits that chancery powers must exist somewhere. This, in his (Mr. S's.) opinion, admits the whole argument. It was said, and doubtless with truth, that the press of business was such as to create delays, that virtually amounted to a denial of justice. If that were the case, it would be palpably wrong to add to the business of that court, (pressed down as it already is,) by the additional weight of all the causes that are now decided by the Chancellor. There were other considerations. The modes of proceeding were essentially different; and it would be impossible for juries to try the complicated issues that come before a court of chancery.

Another branch of chancery powers was the granting of injunctions to stay proceedings at common law. But it would be absurd for a body of judges to issue an injunction from the chancery to the law side of the court.

The constitutions of the several states had been cited. But it would be found that there was no state where those powers were blended in which those powers were general. Delaware had tried both systems, and in 1799 had divided the chancery powers into a distinct and separate branch; and the question had been decided in favour of that course in South-Carolina, after long and deliberate discussion.

On motion of Mr. Duer, the committee then rose, reported progress, and obtained leave to sit again.

On motion of Mr. Wheaton, Mr. Root's amendment was ordered to be printed.

Mr. Dodge offered the following resolution:

" *Resolved*, That a committee of be appointed to revise and prepare for publication the amendments which shall be agreed to in Convention, and that they be instructed so to arrange them that they may be submitted to the people in detail, and in separate articles, and not as an entire or new constitution.

The resolution was ordered to lie on the table. Adjourned.

THURSDAY, OCTOBER 23, 1821.

Prayer by the Rev. Mr. De Witt. The President then took the chair, and the minutes of yesterday were read, and approved.

THE JUDICIAL DEPARTMENT.

On motion of Mr. Eastwood, the Convention resolved itself into a committee of the whole, on the unfinished business of yesterday, (the report of the committee on the judicial department)—Mr. Fairlie in the chair.

Mr. Buel said—Mr. Chairman, I shall in the few remarks, which I purpose to make, endeavour to remove some of the prejudices which appear to be entertained against the court of chancery, in regard to its proceedings. It has been represented as a court difficult of access, and expensive, and prolix in its proceedings. Some gentlemen seem to suppose that at every stage of the proceedings in chancery, the aid of a solicitor or counsel residing in the place where the court sits, is necessary. But it will be found, on examination, that proceedings in that court may be conducted by solicitors in remote parts of the state, with as much facility as proceedings in the supreme court: and if there is any greater difficulty, it arises from the nature of the subjects of chancery jurisdiction, and not from the defective organization of the court, or from any peculiarity in its proceedings. Most of the proceedings are conducted out of court, even to a greater extent than in suits at law. In an ordinary suit the first step is to file a bill, which the solicitor prepares in his office and transmits to one of the clerks. The solicitor then makes out the subpœna, which is the

process of the court, to compel appearance directed to the parties who are made defendants and which may be served by any person.

When the defendant has thus been subpœnaed, he employs a solicitor to enter his appearance with the clerk. The plaintiff's solicitor on receiving notice of appearance, serves a copy of the bill on the defendant's solicitor. The defendant's solicitor within the time prescribed by the rules, prepares the answer, and serves a copy on the plaintiff's solicitor. Thus far no application is ordinarily necessary to be made to the court, unless an injunction is applied for. When the answer is filed, the complainant's solicitor may put the cause at issue by filing a replication. The parties may then proceed to take their proofs either before an examiner in the county where the witnesses reside, or before commissioners agreed on by the parties, or appointed in the manner provided by the rules of the court. The examinations of witnesses may at the option of the parties be taken in all cases in the *immediate neighbourhood* of the witnesses; and in this respect the convenience of parties and witnesses may be consulted to a much greater extent than can be done in suits at law.

When both parties have finished taking their testimony, the depositions are made public, and the cause is ready for argument. At the hearing of the cause, it is true, that counsel must attend the court. But the difficulty and expense are no greater than in causes in the supreme court. In suits at law counsel must attend to try the cause at the circuit; and if any question of law arises, they must also attend the term of the supreme court. The court of chancery, therefore, is no more remote from suitors or counsel than the supreme court. All the arguments which have been urged against the court of chancery on the ground of its terms being confined to two or three places in the state, and thereby subjecting suitors to expense in employing counsel to conduct their causes, apply with equal force against the supreme court.

If the court of chancery should be abolished, and its powers transferred to the supreme court, all the evils complained of would remain in full force.

The mode of proceeding in the court of chancery in taking evidence by examinations in writing, has been complained of; it has been said that the witnesses ought to be examined openly—that the examinations are expensive—and that truth is not so well ascertained. After the very able defence made by the chancellor, of the mode of taking testimony in that court, I shall forbear to make any remarks on that subject—but will only remark that the practice of the court can at any time be altered by the legislature. A fault in the practice, therefore, ought not to be urged as a reason for abolishing the court.

The great expense of the proceedings in chancery, is a subject much spoken of, and some gentlemen are disposed on this ground alone to abolish the court. It might easily be shewn that unless equity and equitable relief is also abolished, the evil would not be remedied by the abolition of the court. Equitable remedies pursued in any other tribunals, would be attended with as much expense as in the court of chancery.

The great expense which often is incurred in chancery suits, results from the nature of the subjects, there litigated. The taking of testimony, forms the greatest item of expense—and until some mode of ascertaining truth can be found out different from what has yet been discovered, suits which involve intricate questions of fact must be attended with great expense.

I have long believed, however, that some improvement in the system of administering equity might be made.

Some of the more ordinary business of the court, might be conducted before masters in chancery, or other officers, in the different counties of the state. If masters properly qualified should be appointed, they might be entrusted with the power of allowing injunctions, saving to the party against whom an injunction should be issued, the right of applying to the court for its dissolution. The power of issuing commissions to try questions of lunacy—or habitual drunkenness, might also be conferred upon masters in chancery. Petitions for the sale of infants' lands to a limited extent, might be disposed of before the same tribunals. Nor can I perceive that any objection could be made, against allowing masters to examine into the regularity of the proceedings on bills for foreclosing mortgages where no defence is made. This would save the trouble and ex-

pense of attending the courts of chancery, to obtain an order for the sale of mortgaged premises, in case where no defence was made or pretended, and the expense of the proceedings would be considerably diminished. I mention these as cases of the most ordinary occurrence; others of a similar nature might be mentioned. If equity powers, to a limited extent, and in defined cases, preserving the superintending power of the court, were conferred upon persons suitably qualified to exercise them, suitors residing in remote parts of the state would be much accommodated—and the court would be relieved from a press of small business which now occupies much of its time.

In a few instances the power of granting injunctions, has, by a statute made some years ago, been conferred upon certain masters designated by the Chancellor.

The number of these masters, as well as their powers, might be increased, and equity in matters of the most ordinary occurrence would thus be administered in every county of the state—without destroying the unity or altering the structure of the court of chancery.

Mr. N. Williams stated, that on a subject of so much interest to the state as that of a proposition to abolish the court of chancery, he could not remain perfectly silent; and yet he was not inclined to enter into the debate, which had been so ably conducted. He was not inclined at present, to say any thing of the report in general. As to the chancery, he would do nothing more than to lay before the Convention the very able and conclusive opinion of one of the justices of the supreme court of the United States, who was entirely disinterested and was admitted to rank among the first of the elegant and learned jurists of our country. The extracts which he would lay before the Convention, would go to prove, in the most conclusive manner, in the first place, the importance of the equity jurisdiction, and, secondly, the propriety, if not the necessity, of placing it in a court separate from the common law courts. To chancery lawyers the subject may be familiar; but to many others this is not the case. Speaking of the *subjects* of equity jurisdiction, he says—" There are cases when relief becomes necessary from accident or mistake of the parties; cases of complicated accounts, whether between partners, or factors, or merchants, or assignees, or executors, or administrators, or bailees, or trustees; cases of fraud, assuming myriads of vivid or of darkened hues, and as prolific in their brood as the motes floating in sunbeams; cases of trust and confidence, spreading through all the concerns of society, and striking their roots deep and firm through all the foundations of refined life and domestic relations; cases where bills of recovery are indispensable to promote public justice; and lastly, cases where bills of injunctions are the only solid security against irreparable mischiefs and losses. Some other cases might be mentioned; but those above named must constitute the body of every equity jurisprudence adapted to our country. And in the times to come, they will probably give ample employment for all the learning, and acuteness, and diligence of the ablest chancellors, in states where courts of equity are established." After reading more from the same author to the same point, Mr. W. proceeded to give extracts on the second point.

" But, it may be asked, why all these objects are not, and may not, be as fully accomplished by courts of law? To a certain extent they undoubtedly are accomplished by those courts, for it would be strange, if courts, established for the administration of justice, should wholly fail to answer the purpose of their institution." " There are many cases in which the parties are without remedy at law, or in which the remedy is wholly inadequate to the attainment of justice. Courts of law proceed by certain established forms, and administer certain kinds of remedies; their judgments are almost invariably general, for the plaintiff or for the defendant. If a case arise in which the remedy already existing at law is inapplicable, or the established forms cannot be pursued, there is an end of relief." It might as well be asked, he says, " Why may not courts of equity perform all the functions of a court of law? But the true answer is, that each is adapted to its own objects, and cannot accomplish the objects of the other without breaking in upon all the settled analogies of the common law, and shaking its oldest and most venerable foundations. He who is bold enough for such an undertaking, may applaud himself as possessing the temerity of Phaeton, with the perfect certainty of not escaping his fate."

"We think that the administration of equity should be by a distinct court, having no connexion with, or dependence upon, any court of common law. There are many reasons which urge us to this conclusion. The systems of equity and law, are totally distinct in their relations and objects. The practice and proceedings have little or nothing in common. The principles of decision are in most cases exceedingly different. A life devoted to either study, will not more than suffice to make an eminent judge; a life devoted to either will be filled up with constant employment. There is some danger, when both systems are administered by the same court, that the equity of a case will sometimes transfer itself to the law side of the court, or the law of a case narrow down the comprehensive liberality of equity. The mixture, when it takes place, is decidedly bad in flavour and in quality."

He speaks, then, of the delicate duty of granting injunctions upon judgments obtained at law, which should be entrusted to an independent court; and then alluding to the courts of the United States, which have equity powers to a certain extent, he says, "They can, in general, take cognizance of suits in equity only where the United States, or aliens, or citizens of other states, are parties. Now it must be obvious, that the great mass of equity suits in every state must consist of controversies between citizens and inhabitants of that state; and that local laws will greatly swell that mass. Where there are few cases, a court either of law or equity may transact the whole business without any serious inconvenience. But it is far otherwise, where suits mix up with all the concerns of society, and may have an indefinite multiplication."

Mr. Duer supported the report of the select committee at length, and replied to the arguments that had been urged against it.

Mr. N. Sanford offered the following amendment.

"The legislature shall have power to modify, alter or abolish any court of law or equity, to establish new courts of justice, and to transfer the functions, or jurisdiction of one court to any other court, subject to the following restrictions:

1. That the court for the trial of impeachments and the correction of errors, as now established, shall remain unalterable.
2. That the right of appeal to the court for the trial of impeachments and the correction of errors, from all subordinate courts, shall be preserved, under such limitations and regulations as the legislature shall make.
3. That all judges of courts, superior to the county courts, shall hold their offices during good behaviour, or until they shall attain the age of sixty years, and shall receive for their services a compensation which shall not be diminished during their continuance in office.

Mr. Van Vechten, in the remarks he was about to make, should not pursue the order of the amendment before the committee; but first consider the proposition for abolishing the court of chancery. It had been proposed to transfer the chancery powers to the supreme court. What benefits, he inquired, could result from the transfer? Gentlemen had said it would be bringing justice home to the doors of the people, and diminish the expenses of carrying on suits. This, he believed, was not correct. The chancellor had yesterday remarked, and he fully concurred in the opinion, that the expenses of litigation would in no degree be diminished by transferring equity jurisdiction to the supreme court. But it had been said that the power of the chancellor was immense, liable to abuse, and dangerous to the liberties of the people. He contended that the jurisdiction and powers of the court of chancery were so well defined and guarded, that no danger was to be apprehended. Admitting, however, that the power of the chancellor was formidable, would the danger be lessened by uniting this power with that of the supreme court? Would not the danger rather be increased by such an alteration? This argument appeared to defeat the object, for which it was introduced. Safety consisted in a division, not in a union, of power. The two great departments of law and equity are distinct, and should never be united. His honourable colleague, (Mr. Kent,) had yesterday stated, that when he was appointed chancellor, he was compelled to commence a new course of legal study, although he had held the office of chief justice. We had been told, that certain states had no courts of chan-

cery, and were able to administer justice without them. He reminded gentlemen, that these very states admired and coveted the system, which gentlemen wished to abolish. Again, we had been told that this court originated in England, and was there used as an engine of the crown. He was at a loss how this could be considered an argument against it in this country, if it had been found beneficial as established with us. The gentleman from New-York, (Mr. Radcliff,) was in favour of abolishing the court of chancery, and of leaving the disposal and distribution of its powers to the legislature. To this course he was decidedly opposed. It was a dangerous and pernicious innovation, breaking in upon the fundamental principles of our judiciary. There was one other topic upon which he should offer a few remarks. The gentleman from Delaware was in favour of excluding from the court of errors, the chancellor and judges. This was, in his view, a most injudicious innovation. The benefit of associating the judiciary with the senate to constitute a court of errors was mutual—the judges enjoyed the privilege of hearing able counsel and acquiring new views, while the members of the senate, who were, in most cases, men of plain sense, little versed in the intricacies of law, derived benefit from consulting and advising with the interpreters of equity and law.

Mr. Wheeler. It was not my intention to have risen on this occasion, nor should I claim the indulgence of the committee, did I not, in consequence of the allusion which has fallen from the honourable chairman of the select committee, feel myself called upon to explain the reasons which induced me to dissent from the opinion of a majority of the committee who framed the report now under discussion.

Sir, it will not be expected from a mere *layman* that he should venture a laboured exposition of the system of judicial polity embraced and recognized by the constitution of 1777; but as many gentlemen appear to treat the first branch of the amendment offered by the honourable gentleman from Delaware, as novel in its character, and dangerous in its tendency, I may be permitted to say, that I can neither perceive novelty nor danger in the plan which he proposes; although it may be questioned whether the adoption of it would subserve the best interests of the state. The administration of equity, as contradistinguished from law as a prescribed rule of action, is unquestionably of high antiquity; and, indeed, it is evident, that property cannot, in all cases, receive complete protection, unless through the medium of a moral scrutiny, and an equitable adjudication. But surely it cannot be correct to term that proposition novel and unsound, which merely goes to unite *law* and *equity* powers, and directs that both shall be administered by the same tribunal, when it is notorious, that the distinction of separate courts for dispensing these powers, is not known or practised by any country in Europe except England, and is equally unknown to the United States, and to every state in the union, with a few exceptions.

The court of chancery, as at present organized in England, is founded in usurpation. In that country, it has expanded its grasp over both law and equity, and has drawn to itself, by gradual encroachments upon the precincts of the common law courts, a jurisdiction of immense extent.

I need not remind this honourable committee of the long and arduous struggle maintained by our Saxon ancestors, in defence of the common law, and of the code of Alfred, against the attempts of their Norman conquerors to introduce the civil law, which they and their monkish followers had engrafted upon the Pandects of Justinian.

In this conflict, our ancestors were eventually successful. They preserved from the rude grasp of popish civilians the trial by jury, the right of examining witnesses *ore tenus*, together with the numerous and invaluable civil privileges interwoven in the common law of the land.

But when the clergy were driven from the courts of common law, they held fast to the office of chancellor, which they claimed as their own, by virtue of ecclesiastic prerogative, and denominated by them a spiritual court, for the keeping of the king's conscience,—the spiritual superintendance over his courts of judicature,—the government of uses, which piety or superstition granted to the church,—protection of infants, &c. &c. and from this beginning, the chan-

cery court of England, and of this state, have extended their jurisdiction to most cases which arise out of the private controversies of mankind.

I wish, however, to be expressly understood, when I say that I shall vote against the abolition of the court of chancery, as I am satisfied that no public benefit can arise from the transfer of its powers to the courts of common law; and more especially, as the whole system of our jurisprudence is deeply interwoven with the principles of our government, it might prove dangerous to the best security of the citizen to abolish that court. I should, however, be pleased to see its exuberant powers somewhat circumscribed—but that duty more properly belongs to the legislature, than to this Convention.

My objections, sir, to the report of the committee, are, that they propose to create two supreme tribunals, each of which is to possess co-ordinate power, and co-extensive jurisdiction. I object, because courts thus constituted would endanger that uniformity of legal decision, upon which alone must rest the security of persons and of property. Again: the proposition of the committee, in my humble view, innovates upon those great and cardinal principles of jurisprudence, which inculcate the benefits to be derived from the constitution of courts of limited and subordinate jurisdiction, communicating with others of more extended authority, in regular gradation, until you reach the supreme judicial tribunal, or court of last resort.

And if it be indeed true that the business of the supreme court has accumulated, so as to render auxiliary assistance necessary, I contend, that the safest and most congenial remedy will be in the creation of a sufficient number of assistant judges, who may be confined to circuit, *nisi prius*, and oyer and terminer duties, with such collateral business as may be enjoined upon them. By such an organization the supreme court will come in contact with no other supreme tribunal; possessing co-ordinate authority, it will, as formerly, hold its superintending authority over all inferior tribunals, and will have ample time to hold such number of stated and fixed terms in New-York, Albany, and Utica, as to effect that despatch in judicial decision, which will effectually silence every complaint of the law's delay.

Again, sir, I object to the report, that it is too diffuse and voluminous, and that instead of prescribing a general rule for the organization of the judicial department, it embraced too much of legislative detail, and that it was further defective, inasmuch as it retained the county courts, without giving to them an organization, which would command that respect and confidence, which is due to the antiquity of their origin, and to their former usefulness, when they were justly considered the favourite courts of the people.

Mr. Jay said that great talent and learning had been exhibited in the discussion of this question, and he should not repeat the arguments which had been so powerfully urged. He wished, however, to make a few remarks on one point—the delay of cases in the court of chancery, which had been mentioned so often in debate. He stated the immense number of suits which were annually disposed of by the chancellor. What were the causes of this expedition and despatch? First, the confidence which was reposed in the opinion of the chancellor—and, secondly, the certainty that the opinion of the chancellor, if incorrect, would be reversed in the court of errors. If the chancery powers were transferred to the supreme court, and circuit courts, there must necessarily be much delay, and additional expenses incurred, which would fall upon clients. He dwelt for some time on the amendment of the gentleman from Delaware. In his opinion it proposed dangerous innovations. We were called on to give up what had been tested by long experiment, for a system which had never been tried. He begged gentlemen to consider that we were now in the full tide of successful experiment. The court of chancery had been of immense advantage to the state, and he hoped we should never consent to its abolition.

Mr. Van Buren did not intend to enter into this debate. He had witnessed with a high degree of pleasure and satisfaction the manner in which this subject had on all sides been discussed. It was a momentous question, and while it had drawn forth the talents and wisdom of the committee, a degree of moderation had been manifested, which we had not always experienced in other

debates. He considered this highly auspicious to the important decision we were about to make. No question of equal magnitude had yet engaged the attention of this Convention. It had been proposed, that we should roll from its bed the corner-stone of our judiciary, which had been planted by the hands of our fathers, and which was the chief support of the structure which was reared upon it as a basis. We have been urged to commit to the winds a system which had justly been considered the proudest pillar in our political fabric, and had been a subject of admiration in all parts of the country. He spoke of the proposition to exclude from the court of errors the chancellor and judges. He deprecated such an alteration. It would never meet with the approbation of the citizens of this state. The greatest excellence in the constitution of that court consisted in the union of the judiciary and the senate—men of plain understanding, with men versed in the science of jurisprudence. He spoke at some length of the advantages of a court of chancery. No judge of a court of law could feel himself at home in chancery suits; and he fully concurred in opinion with the gentleman from Albany, (Mr. Van Vechten,) that a new and long course of study was necessary to qualify even a judge for the office of chancellor. If there were defects in the system as now existing, let them be corrected—let us amend, not destroy. He could not believe that the people of this state ever entertained an idea, that this Convention would proceed so far as to abolish the court of chancery and the supreme court, nor would they sanction such an innovation. He concluded with offering the following amendment:

"The court of chancery shall consist of a chancellor as heretofore; but the legislature may from time to time vest equity powers in subordinate courts, or persons, under such limitation and subject to appeal, and on such terms and conditions as the legislature may prescribe."

Col. Young contended, that gentlemen, who had preceded him in debate, had placed the amendment in a wrong point of view. It had not been proposed to abolish the court of chancery; and if the question on that point was taken now, he should vote against it. The extent of the amendment was merely to leave the subject to the legislature, with the privilege of retaining it or not. He spoke at considerable length on the constitution of the court of errors, and the inexpediency of uniting the judiciary with the senate. What, he asked, was the object of associating the judges with the senate? Was it not to give them an undue influence over the rest of the court, and to give them, an opportunity of recommending their own decisions? He also replied to the arguments which had been advanced in favour of the court of chancery, and acknowledged his inability to see their force.

Mr. Van Buren made a few remarks in reply to Mr. Young, when the amendment was read, and the ayes and noes were called for.

Gen. Root said before the question was taken, he wished to modify the amendment, to make it less objectionable in the view of certain gentlemen, and proposed an alteration, by which the chancellor and justices of the supreme court would continue, as heretofore, members of the court of errors, until the abolition of the court of chancery.

Mr. N. Sanford said, that he had, in the morning, sumitted a plan, which contained his views of the amendments proper to be made, on the subject of the judiciary. As that plan had been misunderstood, he would explain his views concerning it. That plan did not propose to destroy either the supreme court or the court of chancery; but, on the contrary, it proposed to retain both those courts. Mr. S. wished that the court for the trial of impeachments, and the correction of errors should remain as it is, and that the judges of the supreme court, and the chancellor, should continue to be members of that court. But he desired that the legislature should possess an ample power to create new courts of justice, and to modify all courts subordinate to the highest court of appeals. He wished that the legislature should have power to transfer any portion of the jurisdiction of the supreme court to any other court, and also power to create new courts of equity, or to transfer any of the subjects now belonging to the court of chancery, to existing courts or new courts of law.

He deemed it to be very important to the state that much of the business now done in the court of chancery should be transferred to other tribunals. The great question upon which we differ, is, how much shall be done upon this subject in the constitution, and how much shall be left to the legislature. The report of the select committee proposes to establish all, or nearly all, our courts of justice in the constitution. This was not proper. If the scheme of the committee were entirely perfect in reference to our present condition, it would probably become inadequate to the exigencies of the state in twenty years from this time ; and if this scheme should be now adopted, the legislature would then be destitute of power to make the alterations which the public good might require. The composition and organization of the court of the last resort, and the right of appeal to that court, should be definitively established by the constitution. In respect to all tribunals subordinate to that court, the legislature should have the power to create, reform and vary, as the varying circumstances of society may require. This power of the legislature over inferior tribunals should be subject to the general regulations of the constitution, that the judges shall hold during good behaviour, and that their compensations shall not be diminished. Such is the plan of the constitution of the United States; which Mr. S. thought the best model on the subject of the judicial power. The constitution should contain only those great principles and regulations, which are always necessary, and are equally adapted to the wants of society in all circumstances. If we establish inferior courts by the constitution, we shall do either too little or too much : and we shall do for future times that which can much better be done by future legislatures. And why should not this subject be confided, in a great degree, to the legislative power ? It appeared to Mr. S. that an unreasonable distrust of the legislature was entertained in this respect. For himself, he felt no such distrust. Mr. S. approved of the amendment of the gentleman from Delaware in the main ; but as it contained some provisions which he thought exceptionable, and, as it then stood an entire proposition, he should vote against it.

Gen. Root regretted that in attempting to obtain for the people of this state some amelioration of their judicial system, he had been compelled to sustain the attack of so many formidable batteries as had opened upon him.—But it was to be expected, especially from chancery lawyers, in favour of a mother who had bestowed upon them so much nutriment.—He had been attacked as if the chancery system was the only object he had in view. But he had made no effort to dispossess that court of its power, unless the legislature should think proper to abolish it hereafter. Mr. R. was aware of the enormous costs and expenses that are attendant upon that court. It was replied, however, that the legislature could reach it.—But he denied that the legislature could apply an effectual remedy ; for there were always so many chancery lawyers in that body, that every effort to effect that purpose would be ineffectual. It has been said that the court of chancery has become venerable by age. But he would ask when and where it was born ? Mr. R. had not read Smith's History of the State of New-York very lately ; but according to his recollection. it was a power assumed by the governor and council without right, against which the legislature had uniformly and strongly protested, and which had been kept up by usurpation ever since. In reply to the objection that the suits in these courts were expensive, it had been said that rules could be introduced to prevent it. But the difficulty was, that the people at large did not see the grievance under which they suffer. It was known only to the *initiated*—a mystic secret no tto be revealed to the vulgar eye.

The honourable gentleman from Oneida (Mr. N. Williams) had cited the authority of Judge Story, and offered an essay as a speech. [Mr. Williams explained—he did not call it nor consider it a speech.] Call it a reading or recitation then. There was no objection to this course. If gentlemen had not a supply of domestic manufacture, it was proper enough to make use of imported articles.

He would next advert to the wailing of the gentleman from Orange, (Mr. Duer,) who had fancied himself a victim, with his head bound with a *chaplet*, not with a *fillet*, and doomed to the sacrifice. He, (Mr. R.) would carry the

figure a little farther—he would administer the salted cake to the victim, if that would preserve the rights and interests of the people—and he hoped no gentleman would shrink from being immolated upon the altar of the public good. But that gentleman seemed to entertain great apprehensions on account of the ignorance of the senate—that there would be great ignorance in the court of the last resort. That gentleman would, perhaps, wish to see our court of errors clad in the vestments of Westminster-Hall—and the lawyers arrayed in their gowns, and great wigs, to indicate the wisdom thereunder: and, perhaps, would like to see the lieutenant governor, like the lord chancellor, perched on a woolsack.

The gentleman from Otsego (Mr. Van Buren) had called the court of chancery the chief corner stone—the rock upon which our judiciary system rested—and we had been warned against rolling this rock from its bed, and committing it to the winds. If this rock were so light as to be lifted by every legislative puff, let it go—it could not be worth preserving.

It was necessary, Mr. R. contended, that we should have some tribunal to protect the people against judicial refinement. It was an error into which lawyers and judges were apt to fall to adopt metaphysical rules and technical niceties. Was there ever any advantage experienced from metaphysical law? Or had the system of theology been advanced by metaphysical refinement? He wished to have a body of men to constitute that court, who might restore the law to the standard of common sense. He had heard many high encomiums upon the courts of law. He should be glad to hear some upon the court of the people—the court of dernier resort. He believed it deserved them. They had overruled many cases, at the determination of which in the courts of law common sense revolted.

The report of the select committee had provided two courts, the one of which was supreme and the other superior—and both equal! His, (Mr. R.'s) proposition was founded on a different basis. He would establish circuits in such a manner, that their time would be so much engrossed in the despatch of public business, that they would have no time nor opportunity for electioneering. He should also propose that all votes given for any judge, during the continuance of his term should be void, and that he should not be eligible to any office. And as there would not probably be a Convention soon again, they would probably be relieved from that burthen also.

The honourable gentleman from Orange (Mr. Duer) had apprehended great ignorance on the part of the circuit judges, if their selection should be confined to the districts to which their circuits were restricted. But his proposition had not confined their selection at all. It was as wide as the state—and when a circuit judge was wanted over the mountains, he hoped it would be left open in such a manner as to authorize an appointment from Orange and Ulster. If, said Mr. R. I wished to be appointed a judge, I should not move to have the matter left to the future decision of the legislature, but I would consult the stars—become weatherwise—trim my ship, and watch the passing gale.

Much had been said of the absurdity of blending the chancery and law powers of a court together, and of issuing injunctions from the equity against the law side of the court. It had also been said, that it was impossible for the judges to acquire a sufficient stock of chancery knowledge to exercise those powers with propriety. And yet, the honourable the chancellor, and other gentlemen who are in favour of the report of the select committee, agree in the expediency of giving chancery powers to the subordinate jurisdictions—to the county courts. The justices of the peace have it already. They are authorized to execute a trust and to perform a duty, which the judges of the supreme court are incompetent to acquire! If the judges of the court of common pleas can properly exercise chancery powers—cannot the judges of the higher courts? Or if there is an absurdity in the system, does it not extend with equal force to the subordinate jurisdiction? But the jurists of other states have been pressed into the service. They are, or have been, lawyers, and approve of the separate chancery system; and if you had showed them the table of chancery fees, they would doubtless have approved of that also. "The Federalist" also had been quoted again by the honourable gentleman from Schoharie, (Mr. Sutherland,)

and its doctrines seemed to pass current both for law and gospel. Mr. R. could remember when the political notions of that statesman were not acknowledged to be correct by the politicians of other days. And he could recollect, also, that twenty years ago, when he had the honour of a seat in the legislature with the venerable father of that gentleman, that he would have frowned upon the introduction of the political maxims of General Hamilton as authority. Why not advert to the doctrines of William Pitt the younger, or of lords Castlereagh and Liverpool?

It was his (Mr. R.'s) wish, that this subject might, in its details be left to the legislature. Let them abolish the court of chancery, and transfer its powers, if, in their opinion, the public good should require it. He had no fear of the legislature in this respect. They would guard the sanctuaries of justice from stain and pollution.

Mr. N. Williams briefly replied to the remarks of Mr. Root. If he were driven to the importation of foreign manufactures, he hoped he should never be compelled to resort to the coarse fabrics from the county of Delaware.

Mr. W. then offered the following amendment:

COMMON LAW COURTS.

1st. That the state shall hereafter, by law, be divided into five or more judicial districts, in manner and form as the legislature shall deem proper, exclusive of the city of New-York; and there shall be appointed by the general appointing power of the state, for each of the said districts, a person of the degree of counsellor at law of the supreme court, who shall, while he holds his office, reside in the district for which he shall be appointed, to be styled a circuit judge; and who shall have, hold and exercise, in the several counties of this state, all and every the powers and jurisdictions which the justices of the supreme court now have, use and exercise, in the courts of oyer and terminer, general jail delivery, circuits and sittings, and at chambers, with such other powers as may hereafter be given to them by law; whose duty it shall be separately to hold the above named courts in the several counties in the said districts, as often in every year as shall be fixed by law, and in such of the said districts as they shall assign to each once in each year, by an arrangement among themselves; and one of the said circuit judges shall hold the sittings in the cities of New-York and Albany, when and as often as he shall be requested so to do by the supreme court—provided the sittings do not interfere with the circuits. And the said circuit judges shall receive a salary to be allowed by law, and such fees as may be established by law; and shall hold their respective offices by the same tenure as the judges of the supreme court.

2d. And further, the said circuit judges shall have power and authority to hear and determine all civil causes on certiorari, arising in their several districts, and sent by the supreme court to the circuits for argument; and the judgment rendered by them shall be adopted and entered of record in the supreme court, on a return of the papers and proceedings into said court, and shall be carried into effect as if rendered by the said supreme court.

3d. And further, the said circuit judges shall, ex-officio, be members of the court for the trial of impeachments and the correction of errors; and when either of said judges shall be impeached, he shall be suspended from exercising his office until his acquittal.

4th. The legislature may, in their discretion, make provision for one or more vice chancellors, and regulate their powers from time to time, or vest chancery powers in other courts of subordinate jurisdiction.

Mr. King did not rise to enter into a discussion of the question, but merely to suggest one or two observations. It might be expedient to consider, in the first place, what were the measures recommended by the select committee; in the second, what was the object of the proposition of the gentleman from Delaware.

The committee had submitted a system containing various propositions, all of which were subject to the control and amendment of this body. It was a subject that naturally involved some difficulty, and required great experience. The committee had presented for consideration the mature results of their careful examination and deliberate judgment.

In lieu of that report, the gentleman from Delaware had offered a proposition to change in effect, if not to overturn, the whole department of the judicial power, as established under the constitution: for this power, in its higher branches, was, by the constitution, distributed to the chancery, supreme, and county courts, with a controling power in the court of errors.

But in lieu of this long tried system, it is now proposed to vest the judicial power of the state in a court for the trial of impeachments and correction of errors, excluding therefrom the chancellor and judges; a supreme court, to consist of a chief justice, and not more than four, nor less than three, associate judges; in circuit courts, courts of common pleas, and justices of the peace. The amendment, likewise, emphatically provided that the supreme court should have "jurisdiction *in all cases, in law and equity*." The pith of the matter lay here; for if the supreme court is to have jurisdiction *in all cases* in law and equity, it is perfectly clear that the proviso which has been added, and which declares that the court of chancery shall continue till the legislature otherwise direct, must be nugatory, as it will be the duty of the legislature to "otherwise direct," by dismissing the chancellor when he has nothing further to do, as he would not have after this transfer of his appropriate duties to the supreme court. Not to say any thing respecting the union of equity and common law powers in the same court, the effects of which have been shown by others, there would, as Mr. King apprehended, be great insecurity in confiding to the legislature the exercise of so broad a power over the judiciary, as was now proposed.

Alterations so novel, and in his mind so unnecessary, were never thought of by our constituents, and he could not suppose that they would be approved. If there was any thing settled in the formation of government, it was to be found in the constitutional separation of the departments. How was this to be done? by putting one branch under the control of another? Is a separate and independent judiciary to be formed, and reformed, by the legislature? It was understood to be a salutary principle, that, as far as is practicable, without great inconvenience, the legislature, executive, and judiciary should be made independent of each other. But if the proposed course in respect to the judiciary is to be taken, why not re-adjust and re-establish the executive branch upon a similar footing? Why not ordain that your executive shall hold his office for a specified number of years, as his first term under the amended constitution, and at the same time provide that the governor should afterwards hold for a longer or a shorter term, as the legislature might from time to time direct? Why not as well leave it to the legislature to fix and unfix the term of the executive, as to make, alter, or control the judiciary? He would repeat now, what he had before said, that there was no department so vitally important to the dearest interests of the community, as an honest, learned, and independent judiciary. If this department is rendered unstable and dependant, as he feared would happen under the amendment, nothing that is dear or valuable can be made secure.

Mr. K. believed it to be unsafe to commit such unqualified powers concerning the judiciary to the discretion of a legislative body, and with all deference to the experience of the gentleman from Delaware, he was satisfied that his counsel on this occasion, though well intended, was yet dangerous in the extreme.

The courts of errors, of chancery, and the supreme court, should be established on a constitutional basis. Leave minor and defined portions of judicial power to such inferior courts as may be provided by the legislature; always reserving appellate jurisdiction to the respective superior courts of common law and equity. But we cannot consent to ordain that the great divisions of power shall be confounded; yet such seems to be the language of the amendment.

With regard to the construction and dependance of the respective courts, Mr. K. should refer to the learning and experience of others. But it was not safe to the community, to leave the control of one department to the power of another. Whatever power over the judiciary you do commit to the legislature, limit the same distinctly. Define it with precision. Leave nothing to discretion or construction, or more power will be exercised than you intended to give. If the legislature is not confined within distinct bounds, it will usurp on.

and in the end swallow up, all the other departments. Let the barrier between the legislature and judiciary be strongly marked: by this means, you will leave no room for the exercise of construction to the legislature.

Mr. Radcliff rose to express the reasons which would govern his vote.

Mr. Van Buren hoped the gentleman would not again enter into the debate at this late hour—he had already spoken several times upon the question.

Gen. Root wished the gentleman from New-York might have an opportunity of expressing his sentiments, and moved that the committee rise and report, which was carried—and the Convention adjourned.

WEDNESDAY, OCTOBER 24, 1821.

At the usual hour, the sitting was opened by prayer, by the Rev. Mr. Mayer. The President then took the chair, and the minutes of yesterday were read and approved.

THE JUDICIAL DEPARTMENT.

On motion of Mr. Sharpe, the Convention then went into committee of the whole on the unfinished business of yesterday (the judicial department)—Mr. Fairlie in the chair.

Mr. Tompkins proposed that the question which had been discussed for two days past, be now taken.

Mr. Radcliff inquired in what shape the question was to be put? If it was taken on the amendment, all its parts would of course be included; and should the question be decided in the negative, all the provisions of the amendment would be rejected, and could not be recalled.

Col. Young apprehended there would be no difficulty on the subject. The items included in the amendment could be afterwards offered.

Mr. Radcliff offered the following amendment, which was ordered to lie on the table till after the question on Mr. Root's amendment was taken:

"Or in such other court or courts of equity or of law and equity combined, as the legislature may from time to time ordain and establish; in the supreme court of judicature; in circuit courts or sittings, and courts of oyer and terminer and general gaol delivery; in courts of common pleas and general sessions of the peace in the several counties of this state, and such other courts of inferior and limited jurisdiction as the legislature may from time to time establish."

Mr. R. commenced speaking in favour of his amendment, and on the subject generally, when

Col. Young remarked, that the gentleman from New-York, (Mr. Radcliff,) had already made two sensible speeches on this question, and hoped he would not this morning renew the debate.

The Chairman decided, that the gentleman from New-York was not in order; but it was competent for the committee to give him leave to proceed.

On motion of Mr. Wheaton the question on granting Mr. R. leave to speak was taken, and decided in the affirmative, 37 to 36.

As the gentleman from New-York did not avail himself of the privilege granted, the question was again called for and stated from the chair.

Mr. Edwards said, that the gentlemen in their various innovations, had not gone so far as to propose the abolition of the common law, or the law of equity; they keep up the appearance of sustaining both, when, in reality, they are making an universal stride towards the accomplishment of a complete prostration of both. He had listened with a degree of astonishment to the attacks which had been made upon the court of chancery. It appeared that some gentlemen had come here with a determination that civil society should be again reduced to its original elements—that we should turn our backs upon all the wisdom of our ancestors, and conclude that there is nothing worthy of consideration that does not originate in our own brain.

The court of equity which is now proposed to be abolished, or placed in such a situation that the legislature can at pleasure destroy it, has existed ever since the organization of this state as a colony, and in our mother country for ages past. The wise men of our state, and of the nation, have always reverenced this court as one of the proudest ornaments of our judiciary system. When the revolution took place, which separated this from the mother country, the wise men of that day were eager to rescue from the general prostration, this invaluable system of equity; and it has been thus far preserved as an ornament to our judiciary system.

Gentlemen have now thought proper to propose a plan, by which the administration of justice must be very imperfect; as it must be known to all gentlemen acquainted with equity business, that to be familiar with it, requires a long series of years in practice and study. It is equally obvious that the common law is also complex and multifarious. The reasons why our equity and common law are so multifarious, must be apparent to the mind of any gentleman on a little reflection. It is the blessing of this government, that we are governed by laws. Rules are established for all the different cases that may arise; and such rules and laws are indispensably necessary to the happiness of society, by preventing the arbitrary exercise of power by our judges. If all this be necessary to the happiness of society, and we put our judiciary system on such a footing that judges must be ignorant of the laws they administer, it will be equally as pernicious as to abolishing our laws to that extent.

It is proposed to unite all the powers of law and equity: and if so, it will be impossible to find judges capable of administering both. As our system now stands, it requires but the attention of one individual; but as it is proposed to be established, it must require that of five or six at least, whose whole attention ought to be directed to the discharge of other duties which now they have to perform, and which will be still left to them.

Another proposition is, to take from the supreme court of errors the judges and chancellor, leaving the whole duties of that court in the hands of men ignorant of the law. There would be as much propriety in this, as to leave to a board of lawyers to decide upon the health of a man, after the opinion of the wisest physicians had been obtained.

A gentleman from New-York, (Mr. Radcliff,) has come forth as a champion against this court of chancery. He does not come out in direct terms against it, but proposes to leave it in the power of the legislature to dispose of as they may think proper. Do we lack experience on this subject? Have not the experience of the mother country, and of this state, for more than a century, been sufficient to satisfy us on this point? No man knows better than this honourable gentleman, what the effects of this encroachment upon the court of equity will be. It is well known that the effect will be different from what has been here stated. Instead of its being an object for the profession to support this court, it is the contrary—its abolition will have a tendency to promote litigation, and set men by the ears, by which the lawyers will find a harvest. If we wish to secure the rights of liberty and property in our land, let us have fixed and permanent laws, and let them be administered by men who have a competent knowledge of them, and will administer them with wisdom and integrity. The plan proposed will endanger the whole judiciary system; and no complaints of this branch of it have been heard till we assembled in this Convention.

Mr. E. hoped the amendment would not prevail.

The question on Mr. Root's amendment was then taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Bacon, Baker, Barlow, Breese, Buel, Carver, Child, D. Clark, Clyde, Collins, Cramer, Dodge, Dubois, Duer, Dyckman, Edwards, Fenton, Fish, Frost, Hallock, Hees, Hogeboom, Hunter, Huntington, Hurd, Jay, Jones, Kent, Knowles, King, Lansing, Lawrence, A. Livingston, Millikin, Moore, Munro, Nelson, Paulding, Pitcher, Porter, President, Radcliff, Rhinelander, Rockwell, Rogers, Rose, Russell, Sage, Sanders, N. Sanford, Seaman, Sharpe, Sheldon, I. Smith, R. Smith, Steele, I. Sutherland,

Sylvester, Tallmadge, Ten Eyck, Townsend, Tripp, Van Buren, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, E. Williams, N. Williams, Yates—73.

AYES—Messrs. Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Case, R Clarke, Day, Eastwood, Ferris, Howe, Humphrey, Hunt, Hunting, P. R. Livingston, M'Call, Park, Pike, Price, Pumpelly, Richards, Root, Rosebrugh, R. Sandford, Seely, Starkweather, Swift, Taylor, Townley, Tuttle, Van Fleet, Van Horne, A. Webster, Woods, Woodward, Young—36.

Mr. N. Sanford's amendment was next in order.

Mr. Sanford hoped we should first act on the original report, and then on the amendments, if necessary.

Col. Young approved of the course suggested by the gentleman from New-York, and moved that the question be taken on the whole report. If it was rejected, some simple proposition might be offered, upon which we might build.

Mr. I. Sutherland opposed the motion. The report had unjustly been called complicated. He could see no difficulty in acting on it, as we had done in other cases.

Mr. Munro defended the report and hoped the question might not be taken on the whole of it at once. He requested the gentleman from Saratoga to state his objections to the report.

Col. Young replied, that it was too long and complicated. It would require a condenser, as strong as that of a steam engine to compress it into a proper volume.

Mr. Russell offered the following substitute :

1. The judicial power of this state shall be vested in a court for the trial of impeachments, to consist of the president of the senate, and senators.

2. In a court for the correction of errors, to consist of the president of the senate and senators, and ———.

3. In a court of chancery.

4. In a supreme court, to consist of a chief justice, and not more than four nor less than two associate justices.

5. In district courts.

6 In courts of common pleas and in justices of the peace ; and in such other courts subordinate to the supreme court, as the legislature may establish.

Mr. Munro inquired whether that proposition would be briefer than the first section of the report.

Mr. Duer approved of the motion of the gentleman from Saratoga, (Mr. Young,) for acting on the report; but he wished it might be taken by sections, and not in the gross.

Mr. Lansing hoped we should first act on the first section of the report, and not on the whole.

Mr. Sharpe requested the gentleman from Saratoga would withdraw his motion, and that we should first take the question on the court of errors, or some distinct proposition.

Mr. Briggs thought the gentleman from New-York, (Mr. Sharpe,) did not understand the subject, and made an effort to set him right, by explaining the difference between *a* court of errors, and *the* court of errors.

The motion was then modified, and the question on striking out the first section of the report was taken by ayes and noes, and decided in the affirmative, as follows ;

AYES—Messrs. Bacon, Beckwith, Breese, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dodge, Dubois, Eastwood, Fenton, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunting, Huntington, Hurd, Knowles, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Park, Pike, Pitcher, Porter, Price, Pumpelly, Radcliff, Richards, Rockwell, Rogers, Root, Rosebrugh, Ross, Russell, Sanders, N. Sanford, R. Sandford, Schenck, Seaman, Seely, Sheldon, R. Smith, Starkweather, Steele, Swift, Taylor, Townley, Townsend, Tripp, Tuttle, Van Fleet, Van Horne, Verbryck, A. Webster, E. Webster, Wendover, N. Williams, Woods, Woodward, Wooster, Young.—79.

NOES—Messrs. Baker, Barlow, Buel, Duer, Dyckman, Edwards, Hunter, Jay, Jones, Kent, King, Lansing, Lawrence, Munro, Nelson, Paulding, President, Rhinelander, Rose, Sage, Sharpe, I. Smith, I. Sutherland, Sylvester, Tallmadge, Ten Eyck, Van Buren, S. Van Rensselaer, Van Vechten, Ward, Wheaton, E. Williams, Yates—33.

Mr. Van Buren remarked, that the whole report appeared now to be disposed of.

Mr. N. Williams called for his amendment.

Mr. Duer said, that if the question just taken had the effect to reject the whole report, there appeared to be nothing before the committee. He therefore moved to rise and report.

Mr. Dodge seconded the motion. The report was gone, and there was nothing before the committee as a substratum.

Mr. E. Williams believed that the question on the first section of the report did not affect the remaining sections. In legislative bills, a rejection of the first section destroyed the bill; but it was different here. All the sections were distinct propositions.

Mr. Duer dissented from the opinion, and considered the whole report rejected.

After some desultory discussion, the chair decided that Mr. N. Williams's amendment was in order, which was read.

Mr. Duer renewed his motion to rise and report, which after a few remarks from Mr. Young, was put and carried.

In Convention, Mr. Dodge offered the following proposition:

"The judicial power of this state shall be vested in the court for the trial of impeachments and the correction of errors; the court of chancery; the supreme court of judicature; in courts of nisi prius and oyer and terminer and general gaol delivery; in county courts of common pleas and general sessions of the peace; and in such other tribunals of inferior and limited jurisdiction, both as to law and equity, as the legislature may establish: Provided that any chancellor, vice-chancellor, judge of the supreme court, or judge of nisi prius and oyer and terminer, appointed under this constitution, shall hold his office during good behaviour, and until he arrives at the age of sixty years, and shall hold no other office whatever."

Mr. Van Buren offered the following resolution:

"*Resolved*, That the legislature shall have power to divide the state into as many circuit districts as they may think proper; to give to them the power of holding circuit courts, and courts of oyer and terminer, and of nisi prius, concurrent with or exclusive of the justices of the supreme court, that the circuit judges shall also be judges of the court of errors; that the legislature shall have like power to authorize the appointment of one or more vice chancellors, or to establish inferior courts of equity, to have jurisdiction to the amount of , and that said circuit judges and vice chancellors shall hold their offices by the same tenure as the judges of the supreme court, and shall receive such salaries and fees as the legislature may allow them."

Col. Young moved that these propositions be referred to a select committee. Carried.

It was moved that the committee consist of seven members.—Carried.

SENATORIAL DISTRICTS.

On motion of Mr. King, the Convention then resolved itself into a committee of the whole on the subject of senatorial districts—Mr. Van Buren in the chair.

The report of the select committee to whom Mr. Tallmadge's proposition was referred, was read.

Mr. Buel moved to amend the first section so as to read not less "than eight nor more than sixteen." His reasons for the motion were that we should make the senatorial districts as numerous as it might be practicable. He preferred that the subject should be left to the legislature, rather than to fix the number of districts absolutely at eight.

Some objections to the amendment were made by Messrs. Fairlie, King, and E. Williams, when the question on the amendment was taken and lost.

The question then recurred on the first section of the report.

Mr. Radcliff was opposed to dividing the state into eight districts, and renewed the proposition offered some time since by Mr. Root, which was as follows:

"The senate shall consist of thirty-six members to be elected for three years. On the return of every census, the state shall be divided into twelve districts, as nearly as may be equal in the number of electors, and each be entitled to three senators, one of whom to be elected annually. The districts shall be composed of contiguous territory, and not altered till the return of another census."

Mr. R. remarked, that he had voted against that proposition, with the hope that something better would be offered. But he preferred that proposition to the one now before the committee; and for the purpose of trying the sense of the house, he moved to insert *twelve* instead of *eight.*

Mr. Sharpe opposed the motion, as being out of order; and the Chairman decided that it was not in order, the report having been made pursuant to specific instructions from the committee.

The question was then taken on the first part of the first section, and carried.

The several districts were then read in detail, and adopted without amendment, together with the last part of the first section.

Second section read.

Mr. Russell moved to amend by inserting after the word "legislature," a clause providing that the number of districts should not be less than eight, nor more than sixteen.

The amendment was discussed by the mover, and Messrs. King, E. Williams, Burroughs, and Sharpe, when it was withdrawn, and the second section was passed as reported.

Col. Young offered the following proposition, as an additional section:

"That on the taking of the census in 1825, the number of the members of assembly shall be fixed at 128, and shall never exceed that number." Carried.

The committee then rose and reported.

Mr. Van Buren moved to adjourn.

Mr. Dodge called for the reading of the resolutions offered by the gentleman from Schenectady (Mr. Yates) and himself, for appointing a committee to arrange the parts of the constitution which have been acted on, or may hereafter be acted on.

The resolutions were read, and after some discussion rejected, and the following resolution, offered by Mr. Van Buren, adopted as a substitute:

"*Resolved,* That a committee of seven members be appointed, to arrange the amendments which have already and which may hereafter be agreed upon, and to report the same to the Convention, with their opinion as to the expediency of either incorporating them with such parts of the constitution as are not altered by the Convention, or of submitting the same separately to the people."

Col. Young suggested the propriety of amending the eighth section of the report of the committee of the whole, on the right of suffrage, so as to exempt town officers from taking the oath of office, and moved an amendment to that effect.

Mr. Bacon remarked, that all the reports and amendments would again come before the Convention, when the amendment might be acted on. Postponed.

Mr. King, acting as President, announced the following gentlemen to compose the committee to whom had been referred the report and propositions relative to the judicial department:—Messrs. Munro, Young, Root, Buel, N. Williams, Van Buren, and Schenck.

MR. DODGE offered the following resolution :

" *Resolved*, That a committee of be appointed, to report the time and manner of holding an election for the decision of the people of this state on the amendments which shall be submitted by the Convention, in pursuance of the seventh section of the act of the legislature recommending a Convention, passed March 13, 1821."

On motion of MR. VAN BUREN, the resolution was ordered to lie on the table. Adjourned.

THURSDAY, OCTOBER 25, 1821.

Prayer by the Rev. Mr. RICE. Minutes of yesterday read and approved.

On motion of Mr. STEELE, it was ordered, that the journals of the Convention be printed from day to day, as the same are completed.

MR. RADCLIFF, chairman of the committee to whom was referred that part of the report on the appointing power, which had not been acted upon, made a report, which was referred to the committee of the whole, and the usual number of copies ordered to be printed.

THE JUDICIAL DEPARTMENT.

MR. MUNRO, chairman of the select committee, appointed yesterday, to whom was referred the several propositions on the judicial department, reported as follows :

1st. The state may be divided by law into a convenient number of circuits; subject to alteration, as the public good may require. And in case of such division, an equal number of circuit judges shall be appointed, each of whom shall within any of the said districts have the same powers as a judge of the supreme court at his chambers ; and within any of the said circuits, shall have power to try issues joined in the supreme court—to preside in courts of oyer and terminer and gaol delivery ; and if required by law, to preside in courts of common pleas and general sessions of the peace.

2d. The chancellor, the justices of the supreme court, and the circuit judges, shall hold their offices during good behaviour, until the age of sixty years, and shall at the same time hold no other office, appointment, or public trust ; and the acceptance thereof by either of them, shall vacate his judicial office ; and all votes given by the people, or by the legislature, to any such chancellor, justice, or circuit judge, for any elective office, shall be void.

3d. Equity powers may from time to time be vested by law in such courts, or in such persons, subordinate to the court of chancery, as the public good may require.

4th. The office of judge of probates shall be abolished ; and his powers and duties shall devolve upon the court of chancery.

MR. MUNRO moved that the report be printed, and referred to the committee of the whole.

MR. SHARPE believed the subject of the report was well understood. It had been discussed for several days, and he moved that we now go into committee upon it. He understood the committee were not unanimous.

COL. YOUNG approved of this course. He remarked that the committee were last evening unanimous in the report : but one member had changed his opinion this morning, and had set every thing afloat.

MR. VAN BUREN made a few remarks in favour of postponing the report till to-morrow.

MR. WHEELER seconded the motion of Mr. Sharpe, and the Convention resolved itself into a committee of the whole on the report—Mr. Fairlie in the chair.

MR. MUNRO offered the following amendment as a substitute for the first section of the report of the committee of seven, of which he was chairman.

"The judicial power of this state shall be vested in the court for the trial of impeachments and correction of errors—in the court of chancery—in the supreme court, which may, if the legislature shall so direct, be divided into two separate divisions, each division to hold terms at such times and places as may be directed by law—in courts of common pleas, and general sessions of the peace—and in such other inferior courts as the legislature may from time to time establish, subject in all cases to the appellate jurisdiction of the supreme court."

The same was ordered to lie on the table, and subsequently rejected.

Mr. Tompkins did not rise to take any part in the discussion; but as it seemed that the committee had not been unanimous, and that a part of the report had been stricken out, he would move, for the purpose of presenting the question fairly to the Convention, to re-insert the same, to constitute the first section, in the following words:

"The judicial power of this state shall be vested in a court for the trial of impeachments and the correction of errors, to consist of the president of the senate, the senators, the chancellor, and the justices of the supreme court—in a court of chancery, possessing the same jurisdiction and powers as the present court of chancery—in a supreme court, to consist of a chief justice, and not more than four and not less than two associate justices, as the legislature may prescribe, possessing the same jurisdiction and powers as the present supreme court of this state, and the justices thereof now possess—in courts of common pleas—of general sessions of the peace, and in such other courts as may from time to time by law be established."

Col. Young rose to submit a few remarks explanatory of the views of the select committee, whose report was then under consideration. The report was not presented as had been agreed to by the majority of the committee, and although the vote of the committee was not precisely in conformity with the principle for which he contended, he considered it a matter of compromise, and was willing to abide by the report, as far as it was in conformity with the principles thus agreed to. He was in favour of giving to the legislature power to organize subordinate courts on certain conditions; but he was not for fixing in the constitution a provision which should bind the legislature, to rivet upon the people a system which we had never tried, and with which we probably should not be pleased. If the Convention should impose on the legislature the duty of making a number of circuit judges, the number of supreme judges would still be the same, which would be a great additional expense; and as had been remarked by the honourable chancellor, a less number of supreme judges would be equally as good.

The greater the number, the greater would be the delay; and the less would be their responsibility for the faithful performance of their duties individually. If the first section was omitted, there would be no limits to the number of judges, and we might be compelled to pay the district judges in addition to the full number of the supreme court as now established, when it was agreed that three would be as good as five. Why are we to feel any regret at placing the judges of the supreme court on the same footing, with respect to future appointments, as we have the judges of common pleas in the different counties in the state? Indeed it is not proposedto do as bad by them; for we do not vary their tenure of office, whilst the first judges of common pleas are restricted to five years, when they have heretofore held for life, or till they arrived at the age of sixty.

For this reason he should vote for retaining the first section.

Mr. Munro wished to explain the manner in which the report had been presented to the Convention.—A majority of the select committee had agreed to the report last evening, but this morning they had not concurred in the report. The principle contained in the first section of the report, among others, came up when the subject was under consideration in the select committee. The question on this section produced a tie, in the six members of the committee, leaving the casting vote to him (Mr. Munro;) and he then told the committee that he preferred measures rather than men. He was more anxious to establish a wholesome system of jurisprudence, than to gratify political ambition by the over-

throw of men now in office; still, if public good required that the present incumbents in the judiciary establishment should be thrown from their seats, he would cheerfully acquiesce in the measure; if, by so doing, the committee would give such a system of jurisprudence as should meet his approbation.

It rested with him to put this report in form; he did so; and this morning by note requested the committee again to assemble. He then told them, that he was anxious to bring justice home to the doors of the people in the different parts of the state; and he feared that the plan contended for would give them but the shadow,—the mere semblance of justice without the reality. He was anxious to see justice administered with skilful hands, and in his judgment the district system was not calculated to accomplish that end. It was known full well whence this district system first emanated; and he regretted to have found it springing from such a source. He was fearful that the authors of it would have reason to deplore it themselves.

Here Mr. Munro begged the indulgence of the committee, whilst he should explain the plan which he recommended (plan proposed). Let the court of errors remain as now established; the court of chancery he would not disturb; but give the legislature power to create vice-chancellors, or subordinate courts of equity, to increase the number of judges of the supreme court, and to divide them into two classes,—locating one class in Albany or New-York, and the other in Utica, or such other place as the legislature should direct; making it the duty of each class to hold four terms every year, and the individuals of both classes to perform all the circuit business in the state. This would be an ample number to perform all the business; and it would be upon the same principle as our present establishment. In this way, we should require but three judges in addition to the present number; and on the plan of district judges, there must be at least double the number. The disadvantages of having local judges had been heretofore sufficiently explained, and the advantages arising from our present system must be obvious. In either case it was very desirable that the judges should not interfere with politics; and if they would attend to the administration of justice, the plan which he recommended was better calculated to obtain the first talents in the state, and to secure an impartial discharge of duty, than that of having judges preside within their own local districts, among their friends and associates.

From the court of oyer and terminer there is no appeal, unless it is by the consent of the judge who presides; and in this court are determined the causes which affect our liberty and life. Is it not, then, highly important, that the man who is to pass upon the life or death of his fellow mortals, should be a man of integrity and of great legal acquirements? And shall we be confined to a particular district, is better men can be found in the state, out of that district? It is to be hoped this will not be the case.

Mr. Buel was opposed to the proposition before the committee. What, said he, are we about to do? We are about to provide in our constitution for the removal of the incumbents in our high judicial departments, without having altered in any shape their jurisdiction, or the construction of the courts which they compose. By this, what do we say to the world? We say that we are about to make a constitutional provision, which has no other object than that of pulling from the bench of our supreme court certain individuals who may have become odious to a portion of the community. This is not worthy of the people of the state of New-York, or of this Convention. It will be a disgrace to us.

Mr. B. said he did not take this stand from any particular partiality for these judicial officers, but because he considered it beneath the dignity of so enlightened a body, and because he knew there was a method of reaching such offices by law, and that was the wisest course to pursue in this case, if they have done any thing for which they deserve to be removed.

Mr. Edwards. I do not conceive it proper that a subject of such deep concern should be passed upon without being more thoroughly discussed and seriously considered. However lightly our judicial system may be held by some, yet if we fail in establishing a good one, the community will sooner or later be made to feel that it is a thing of no ordinary importance. A little reflection must satisfy every man, that in a country which is governed solely by laws, as

every free government must be, and where those laws can be brought to bear upon the people only through the instrumentality of judges, that the men who are to administer those laws should be extremely well qualified to perform those duties.

The common law, sir, is so framed as to afford a reasonable rule for the regulation of every question which can arise relative to the rights of persons and the rights of things. As it embraces all the transactions which occur in civil society, its rules must necessarily be extremely multifarious. A thorough knowledge of those laws is only to be acquired by long and laborious study; and to enable the community to enjoy the full benefit of them, it is necessary that they should avail themselves of the services of learned men. When our ancestors came to this country, although they fled from the persecutions they experienced in their native land, yet such was their attachment to the common law, that they brought it along with them, and subjected their conduct to its regulation. We have been long flourishing under it, administered as it has been by institutions similar to those under which it was nurtured. The mother country is indebted to it for whatever of liberty remains among them: and it is generally admitted, that the judicial establishments are the only sound parts of their government. By the wisdom of the founders of the English government in this state, those institutions were here established, and the consequence has been, that while other states have gone on in a course of experiments, our judicial establishments have remained firm and stable: revered by the people of this state, and admired by those of our sister states. Now, sir, with all this blaze of experience in favour of maintaining those institutions, shall we rudely prostrate them? What oracle is there among us who can afford us a sufficient assurance that we shall benefit by the change? As it respects myself, sir, I know of none: and I doubt whether any thing short of inspiration could satisfy me of the expediency of making it.

Let it not be said, sir, that the change contemplated by the report on your table, is not material. True, the supreme court is to be continued, but how is it to be with the circuits? Let no gentleman deceive himself into a belief that it is matter of trifling concern who presides there. Who, sir, I would ask, consigns your fellow beings to the gloomy recesses of your state prisons? Who dooms them to the scaffold? Under whose presiding genius is it that your juries proceed in the investigation of facts which are to regulate the disposition of your property? Is it not the circuit judges? If ignorance and stupidity there preside, what will be the consequence? I entreat you, gentlemen, while bending your minds to this subject, not to let them glance for a moment from the grand object to be obtained—the faithful and intelligent administration of the laws—the faithful administration of justice.

But it will be urged that under the contemplated system, you may have as intelligent judges upon the circuits, as you would ordinarily have under the present arrangement. But, sir, will this be the case? If this power is delegated to the legislature, they will be passed upon from time to time, by two-penny lawyers, who will confederate to secure these places. The legislature never can be induced to give adequate salaries to ten or a dozen circuit judges to command the services of suitable men, and the consequence will be, that those places will be usurped by ignorance.

Although, sir, I cannot give my consent to the adoption of the present plan, yet, sir, it is apparent that some enlargement of the judiciary is necessary to enable the courts to despatch the business. There is such an accumulation of it, and so much delay has ensued in consequence of it, that it amounts almost to a denial of justice, The system originally reported by the committee, met with my entire approbation, but that has been voted down. The plan now proposed by the honourable gentleman from Westchester (Mr. Munro) I also highly approve of. It simply contemplates the adding of three judges tothe supreme court, and vesting the legislature with the power of authorizing one half of the judges to hold the terms. Under this arrangement, ten terms could be held in New-York and in Albany, Utica and Canandaigua, and abundance of time would be left to enable the judges to hold the circuits. The advantages of this system over that proposed,of creating circuit judges,are very great. The peculiar duties of circuit judges are to investigate facts, and do not lead them to pay

that attention to the study of the laws which the public welfare requires. Judges, on the other hand, who both sit at the terms and hold the circuits, must of necessity give much of their attention to their books. By this arrangement, therefore, you will have able men, and at a much less expense than you will be subjected to by the plan reported by the committee. In the one case your laws will be administered in their true spirit, by learned and able men; and in the other, not unfrequently by ignorant men, who, from lack of knowledge, must substitute their own discretion. Discretionary power in the hands of a judge is but another term for arbitrary power; and under such an order of things, your judges might ride the circuits the terror of the land.

It appears, sir, from the motion made by the honourable gentleman from Richmond, (Mr. Tompkins,) that another object in view, is so to frame the constitution as to drive the present judges from their stations. Justice to myself, and to the station I here occupy, demands from me some remarks on this subject. I have, sir, so freely and so frequently expressed myself in terms of reprehension of the political course pursued by some of those gentlemen, that my sentiments respecting them cannot be unknown to many of the members of this Convention. But, sir, I was sent here to assist in revising the constitution of this state, and to establish fundamental laws for its future government, and not to try any man or set of men for their transgressions: and I should be for ever ashamed of myself, if I could for a moment be brought to avail myself of a "little brief authority," for the purpose of gratifying any hostile feelings. You have provided tribunals, and invested them with power to animadvert upon the conduct of your judicial officers. Turn them over to those tribunals; it is not our business to pass upon their conduct. Such a proceeding would fix a blemish, a stain upon the character of this Convention. It is, to be sure, urged, that we have dismissed the senate and the first judges of the counties. But, sir, the new organization of the senatorial districts, which the public good demanded, rendered the proceeding, with respect to the senators, indispensable. As to the first judges, it was matter of general complaint, that the permanent duration of their offices, owing to the appointment of incompetent men, was a source of serious inconvenience in many of the counties. You were also led to believe, that the welfare of the state would be promoted by shortening the terms of their offices. You, therefore, made their private interest yield to the public good. But, sir, no alteration has been made in the organization of the supreme court to render this change necessary. There is not a veil to conceal the motive which induces to the adoption of this amendment. It stands naked before the world, that the motive, and the only motive, is to dismiss the judges. This cannot be concealed from the people, and it may as well be frankly acknowledged at once. I have nothing to say in justification of their conduct: but I repeat it, that we are out of the line of our duty in inflicting punishment upon them. It is unbecoming the dignity of this honourable body. You have established tribunals who are invested with the necessary power: leave it to them to do what justice may require.

Mr. Van Vechten said, the Convention was assembled for the purpose of amending our constitution; and no man had ever dreamed of its being for the purpose of dismissing officers from our government. We ought to confine our labours to fundamental principles. He was willing to authorize the legislature to increase the number of judges in the supreme court; because he considered it necessary, in order to get along with the business which must necessarily be done in that court. The plan recommended by the chairman of the select committee, does not at all interfere with our present established courts; but merely provides, that the legislature shall make arrangements to meet the increase of business in this growing state. It is asserted, that some of our judges have interfered too much with the politics of the state: if they have, and it is a curse, is there not a remedy at hand, without squandering our time, and encumbering the constitution with that which does not come within our jurisdiction? If these men are guilty of the charges alleged, are we prepared to go into an investigation of the subject at this time? Is it seemly, or is it consonant with the dignity of this Convention, for the purpose of driving these men from office, to insert in the constitution which we are forming for generations to come, a clause which

has no object in view but to gratify personal revenge? We have already declared by our acts, that these men shall hold till they arrive at the age of sixty years; and we have also provided that if they shall conduct in such a manner as to forfeit their claim to a continuance in office, a majority of the assembly may impeach, and by two-thirds of the same, and a majority of the senate, they may be removed. With respect to the interference of our judges in politics—who has not had to do with politics? Have we had a governor for the last fifteen or twenty years that has not been a warm partizen? and have we not countenanced it in them, and called them to our counsels? It is not till quite lately that we have heard this great outcry. Have we not chosen the judges of our supreme court as electors for president and vice-president of the United States? We have gone hand in hand with these men, approving and leading them forward, and now we are to destroy them at a blow, contrary to the rule which we have ourselves established:—leaving the stain upon our constitution, that future generations may read our disgrace with shame and confusion.

Gen. Root having been honoured by an appointment as a member of that committee, hoped he should be indulged in an exposition of its proceedings. They convened yesterday afternoon, and although they were not unanimous, yet a compromise was the result of the deliberations. Had the subject been referred to us individually, (said Mr. R.) or to my honourable friend from Saratoga, (Mr. Young,) we should probably have presented a report with different provisions. But this was adopted in a spirit of compromise. When we retired from the committee, we had verily supposed that the only remaining duty that devolved upon the honourable Chairman, was to condense and compress those matters in a compact form, to which the committee had assented. This morning we received a summons to attend in the committee room, and with astonishment he (Gen. Root) found that a proposition was made to re-consider the first section of the proposed report, because the honourable Chairman had altered his opinion. The Convention was then in session, and we retired from the committee to our appropriate duties, and here, when the report was presented, we found that the pen had been drawn across the first section of the report.

It is undoubtedly laudable for gentlemen to alter their opinions after a night of repose. After consulting his pillow, the Chairman thought it was *dishonourable* this morning to report what was *honourable* last evening. I have not, (said Mr. Root) from consultation with my pillow, *or with any individual*, found cause to change my opinion.

It has been said by honourable gentlemen, that it would be a stain upon the constitution to send forth to the people such a provision. What? To organize our courts of justice, *a stain?* To submit to the representatives of the people the question, whether there shall be three, four, or five members of the supreme court—is this a stain? If it be a stain, let that instrument be stained.

But, sir, there are other stains if this be one. It is already provided, that your present corps of senators shall be disbanded. The honourable gentleman from Queens, (Mr. King) has told us that it is necessary that they should be reduced to the ranks, and the Convention has acted accordingly. I made a proposition that was calculated to retain twenty-four of them; but it was voted down, and both the gentleman from New-York, (Mr. Edwards) and the gentleman from Albany, (Mr. Van Vechten) thought it was necessary to begin anew, and dismiss the present incumbents. The first judges of the courts of common pleas also, who, under the present constitution, held their offices by the same tenure as the judges of the supreme court, are now reduced to the term of five years, and made removable both by address of two-thirds of the the assembly and a majority of the senate, and also by impeachment: and this is no stain. The gentleman from New-York, (Mr. Edwards) thinks this to be proper, because some of the judges of the courts of common pleas are incompetent to the discharge of their duties, and therefore we ought to get rid of them. And yet in the next breath he proudly says, that he has not come here to get rid of official incumbents, but to lay the foundation stone in the great political edifice. [Mr. Edwards explained, and denied that he had either advocated that principle or voted for it.] Mr. Root said it was immaterial to him how the gentleman voted. The first judges of the courts of common pleas were stripped

of their offices, because they have been alledged to be incompetent, therefore they must be removed. That honourable gentleman did not come here for any other purpose than to rear a stupendous fabric on the corner stone of his own laying. He could try judges of the court of common pleas, but not the chancellor and judges of the supreme court. He could try justices of the peace too, and pass sentences of incompetency and villany upon *them*, but not upon the great judges of our land.

The gentleman from New-York had gloried in the common law. It was, in his opinion, the boast of this country, and of that from which we had derived it. But yet he would violate the common law, by having eight judges instead of four, which that law had prescribed. He would also have their term of office during good behaviour. But it will be remembered that the term *quamdiu bene se gesserint* was not in operation until the sturdy commons of England had wrested it from Charles I. The gentleman from New-York (Mr. Edwards) seemed to be more familiar with the history of Connecticut than with that of England. In the latter country, after the star chamber was abolished, and the infamous Jefferies had doomed to the block the most virtuous patriots of the realm, it was then, and not till then, that such commission issued. The common law number was four. The council of revision said it was five, and the gentleman from New-York would extend it to eight.

The gentleman from Albany (Mr. Van Vechten) has besought us not to disgrace ourselves, and the constitution, by pronouncing judgment on the judges for their interference in politics. The fact of their interference is admitted. But we are called upon to spare these political judges, because their offence is palliated by our encouragement. *We* have encouraged them, says the gentleman. *We* needed their help. If this plural pronoun *we* is intended to apply to *all* in this assembly, *I* beg to be excused *for one*. I have never encouraged them in their political career, nor am I responsible for their perseverance in it. On the contrary, I have witnessed it with dismay and disgust; and from time to time have raised my *feeble* voice in vain against politico—judicial domination. The task I undertook was calculated to appal the stoutest heart. The situation in which that resistance placed me, is known. But I do not shrink from the conflict. The attack has been made, and the citadel must open its gates to the people, or shake to its foundations.

But, sir, on this occasion, and in this place, I am not disposed to try those judges. Let them be left, like the first judges of the courts of common pleas, senators, justices of the peace, and other officers of the government, to the appointing powers, to say whether they have so behaved in their official stations, as to entitle them to a re-appointment. They have certainly a better chance for it than any other men of equal worth and talents. Their learning and ability have been blazoned from one end of the state to the other, and if they have *merited* public confidence, their elevation and reinstatement will be sure. But suppose that the governor and senate should think the present incumbents unworthy of a re-appointment—ought not their names in that case to be omitted? Should not that question be decided by the peoples' representatives? Are gentlemen afraid that those judges will be found unworthy and wanting when weighed in the balance?

I should suppose, said Mr. R. that the chancellor and judges would not feel themselves under very strong obligations to those gentlemen who had presented this view of the case to the public, and who were unwilling that their offices should be the reward of approved and investigated merit. It would seem to betray a consciousness that the judges are so unworthy, that the people are anxious to pull them from the bench. The argument certainly does not bestow a very high compliment upon the integrity and worthiness of those officers. Are they so sensitive as to recoil at the touch? The honourable chancellor has told you, and doubtless with truth, that he has no fear of such investigation. And if others have an equal security in the consciousness of rectitude, they are in no danger of being injured by the indignation of the people. Gentlemen, however, have come forward, unasked, at least it is charitable to presume so, as their champions to defend them, when nothing appears to hinder their immediate re-appointment!

Mr. Edwards commenced by tendering his acknowledgments to the honourable gentleman from Delaware (Mr. Root) for his kind intentions in endeavouring to sit him right with respect to his trivial faults, and although he had never made the assertions which the gentleman imputed to him, yet he would indeavour to reciprocate the favour intended. The gentleman has stated that Jeffreys was Chief Justice of England, in the reign of Charles the First. This is not the fact. He was appointed during the reign of Charles the Second, and continued under the reign of James the Second. He has also stated that the judges were made independent of the crown by Charles the Second. Here he has again fallen into an error. They were not made independent till the reign of William the Third. I would admonish the honourable gentleman, hereafter, before he undertakes to correct the errors of others, to pay some attention to his own. The gentleman, finding it impossible to assail my arguments, has conjured up the phantoms of his own brain, and after imputing them to me, has most valiantly demolished them. In this he has betrayed a consciousness that my arguments were invulnerable, and defied the batterings of his artillery.

Mr. Van Buren said, as he was a member of the committee whose report was under consideration, and to the proceedings of which such frequent reference had been made, some explanation of his views became a duty. He did not think that this committee could receive much advantage from a detail of the particular proceedings of the select committee, and he would not therefore follow his colleagues, in the examination of those proceedings. What had already transpired, superseded the necessity of saying that there had been much warmth and altercation among them; there had, in truth, been that unprofitable, as well as unpleasant excitement, which he had anticipated yesterday, when he made an unsuccessful application to the Convention to be excused from serving on it.

The true and only question presented by the amendment offered by the president, was, whether this committee were prepared to insert an article in the constitution, for the sole purpose of vacating the offices of the present chancellor and judges of the supreme court, to separate them from the other officers in the state, and to apply to them a rule, which had not as yet been applied in a single instance. Gentlemen might attempt to disguise the matter as they would; it was in vain to hope that it could be understood by the people in any other light. A moment's consideration must satisfy gentlemen, that such was the case. If the Convention had changed the organization of the courts, there would be a propriety in providing for the re-appointment of the judges—but this they had not done. The court of chancery was placed by the amendment on precisely the same footing as it now stood in the constitution. How, then, could it be gravely contended, that its introduction into the amendment was for any other purpose than to get rid of the incumbent? The only alteration made in the supreme court, (if that could be called one,) was the authority given to the legislature to reduce the number of judges. This, he said, was a power they now possessed, by withholding salaries from all above the number they desired. But assuming that it was in fact an alteration, can the gentlemen from Delaware and Saratoga, flatter themselves with the hope, that this trifling alteration can possibly, with an intelligent public, exempt the amendment they support from the imputation of being a mere personal measure, having, and being intended to have, a personal bearing, and no other? But to put this matter at rest, let the gentlemen give to their proposition the shape of their argument. If, say they, the legislature should alter the number, then a re-appointment will be proper; and to meet such a case, they submit a proposition which requires a re-appointment at *all events*. Let them say, in their amendment, that *if* a change of the number of the judges is ultimately effected, *then* the offices of the present incumbents shall be vacated. Then, and then only, will they be entitled to the benefit of their argument. That, however, he knew would not answer their views. But why reason upon this subject? The gentlemen have, as in the select committee, thrown off all disguise, and say these offices ought to be vacated; and it is their desire that the constitution should be made to bend to that purpose. Mr. Van Buren said he had stated that the amendment went to apply this rule of vacating commissions, exclusive-

ly to our highest judicial offices. This, he said was strictly true with regard to the attorney-general, secretary of state, surveyor-general, and comptroller. Their offices had not been vacated. The only provision which had been made was to provide for appointments in case of vacanies. The same might be said of the canal commissioners, and of every other office in the state.

As to the first judges, he said gentlemen were not correct when they supposed the case analogous. The incumbents had not been removed from those offices, but the office itself, as an office during good behaviour, had been abolished. With respect to the senators, to which the committee had been referred, he denied that, from any thing they had as yet done, the offices of the present senators would be necessarily vacated before the expiration of their constitutional term. He had, however, no doubt a re-election of senators would be directed. Upon that subject there appeared to be but one opinion. But why was this done? Was it the removal of an incumbent, from an office which was left unchanged, as was the case with that of chancellor, &c. No. It was from indispensable and unavoidable necessity. The present senators were the representatives of freeholders only. By the amendments adopted, the senators hereafter to be elected, would represent electors of a different character, and would come from different districts, There would therefore be a palpable incongruity in the formation of a body, one part of whom were elected by freeholders and another by electors of a different character, The case of senators was consequently by no means applicable to the present. The matter therefore being clear, that the only effect of the amendment would be to turn out of office the present incumbents, he submitted to the Convention whether it would be either just or wise to do so. He submitted it, he said, particularly to that portion of the Convention, who would be held responsible for its doings —and who would in a political point of view, be the chief sufferers by a failure of the ratification of their proceedings by the people. He warned them to reflect seriously on this most interesting matter. He directed their attention to the never ending feuds and bitter controversies which would inevitably grow out of a loss of the amendments adopted by the Convention. He knew well, he said, how apt, men placed in their situation—heated by discussions, and sometimes pressed by indiscreet friends—were to suffer their feelings to be excited, and to lead them into measures which their sober judgments would condemn. It was their duty to rise superior to all such feelings. He asked them to reflect for a moment, and then answer him, whether, when they left home, they had ever heard the least intimation from their constituents, that instead of amending the constitution upon general principles, they were to descend to pulling down obnoxious officers through the medium of the Convention; and he asked them whether they were not sensible of the great danger of surprising the public at this advanced stage of the session, when the greatest uneasiness already prevailed, by a measure so unexpected. There was, he said, no necessity for, or propriety in, this measure. They had already thrown wide open the doors of approach to unworthy incumbents. They had altered the impeaching power, from two thirds to a bare majority. They had provided also that the chancellor and judges should be removable by the vote of two thirds of one branch, and a bare majority of the other. The judicial officer who could not be reached in either of those ways, ought not to be touched. There were therefore no public reasons for the measure, and if not, then why are we to adopt it? Certainly not from personal feelings. If personal feelings could or ought to influence us against the individual who would probably be most affected by the adoption of this amendment, Mr. Van Buren supposed that he above all others, would be excused for indulging them. He could with truth say, that he had through his whole life been assailed from that quarter, with hostility, political, professional, and personal—hostility which had been the most keen, active and unyielding. But, sir, said he, am I on that account, to avail myself of my situation as a representative of the people, sent here to make a constitution for them and their posterity, and to indulge my individual resentments in the prostration of my private and political adversary. He hoped it was unnecessary for him to say, that he should forever despise himself if he could be capable of such conduct. He also hoped that that sentiment was not confined to himself alone, and that the Convention would not ruin its character and credit, by proceeding to such extremities.

Mr. Buel felt it incumbent on him to explain the conduct of the chairman of the select committee, which had been placed in an important point of view.

When the committee met last evening, there was a wide difference of opinion, and the chairman of the committee, (Mr. Munro) only acceded to the first section of the report, and which had been stricken out this morning, conditionally. That is to say, if the committee would frame the report in other respects, so as to meet his views, he would then assent to the first section, as a matter of compromise. But such was not the fact, and the chairman of course was absolved from his pledge, given thus conditionally. And he had early this morning called the committee together, and a majority of them had agreed to strike out the first clause.

Col. Young replied to Mr. Van Buren.

The question was then taken on the amendment offered by Mr. Tompkins, by ayes and noes, and negatived, as follows :

NOES—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Breese, Buel, Burroughs, Carpenter, Carver, Clyde, Collins, Dodge, Duer, Dyckman, Edwards, Ferris, Fish, Hallock, Hees, Hunter, Huntington, Jay, Jones, King, Lansing, Lawrence, Lefferts, Millikin, Munro, Nelson, Paulding, Reeve, Rhinelander, Rogers, Rose, Sage, Sanders, N. Sanford, Sharpe, I. Smith, R. Smith, I. Sutherland, Sylvester, Tallmadge, Ten Eyck, Townley, Tripp, Van Buren, Van Horne, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wheaton, Wheeler, E. Williams, N. Williams, Woodward, Yates—64.

AYES—Messrs. Briggs, Brooks, Case, Child, D Clark, R. Clarke, Cramer, Day, Dubois, Frost, Hogeboom, Howe, Humphrey, Hunting, Knowles, A. Livingston, P. R. Livingston, M'Call, Pike, Pitcher, President, Price, Pumpelly, Radcliff, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, R. Sandford, Schenck, Seely, Sheldon, Starkweather, Steele, Swift, Taylor, Townsend, Tuttle, Van Fleet, Woods, Wooster, Young—44.

On the above question, Messrs. Kent, and Spencer, excused themselves from voting, as they were interested in the question.

The proposition offered in the morning by Mr. Munro being next in order was then read again.

Mr. Buel moved that the committee rise and report, with the view that the propositions which had been submitted might be printed.

Mr. Sharpe believed the committee had made up their minds to retain the judiciary, as established by the present constitution.

Col. Young inquired who would command the second platoon of the supreme court, if it should be organized as proposed ? No provision had been made for more than one chief justice.

Mr. Munro replied that the oldest judge present would of course preside, in the absence of the chief justice.

Mr. Birdseye made a few remarks in favour of the amendment offered by Mr. Munro.

Col. Young replied. If we have two courts of equal jurisdiction, many difficulties will arise. We shall be obliged to have two reporters. We now have two volumes a year, at six dollars each ; which, to country lawyers at least, is a pretty heavy tax. Besides, there would be so many judges on the bench, that they could not consult together, and you would have to poll them as you would do a jury. Mr. Y. thought the principle of the question had been settled by the vote of yesterday.

Mr. E. Williams rose amidst calls for the question. He hoped, as he did not often trouble the committee, that he should be indulged for a few moments. He then proceeded to reply to Mr. Young, in regard to the reporter, and observed that gentlemen did not perhaps know how much money the present reporter received—they did not know that the great and powerful, rich and patriotic state of New-York, paid the reporter of the supreme court, the court of chancery, and court of errors, the *enormous sum of five hundred dollars a year !* Yes, said Mr. W. he gets five hundred dollars a year ; and what is further to his benefit, the state lately directed him to furnish the several county clerks' offices

with his reports, *at his own expense*, and this costs him, *the sum of six hundred dollars !* Mr. W. thought there was little to be apprehended upon this head. If the lawyers only read all the law books that they have purchased, it was no matter how many they had, and he was sure their clients would not regret it. No, (said he to Col. Young) neither your clients, nor mine, will have occasion to regret that we read too many law books. Mr. W. extended his remarks some time, and concluded by advocating the proposition offered by Mr. Munro.

The question on the amendment offered by Mr. Munro was then taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Baker, Barlow, Beckwith, Breese, Briggs, Brooks, Carpenter, Carver, Child, D. Clark, R. Clarke, Collins, Cramer, Day, Dodge, Dubois, Eastwood, Fenton, Ferris, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Huntington, Hurd, Knowles, Lansing, A. Livingston, M'Call, Millikin, Moore, Park, Pike, Pitcher, Price, Pumpelly, Reeve, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, Sage, Sanders, N. Sanford, R. Sandford, Schenck, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Starkweather, Steele, Swift, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, Van Vechten, Verbryck, E. Webster, Wendover, Wheeler, N. Williams, Woods, Woodward, Wooster, Yates, Young—86.

AYES—Messrs. Bacon, Birdseye, Buel, Burroughs, Duer, Dyckman, Edwards, Fish, Jay, Kent, King, Lawrence, Munro, Paulding, President, Rhinelander, Rogers, I. Sutherland, Sylvester, Tallmadge, J. R. Van Rensselaer, Ward, Wheaton, E. Williams—25.

Mr. M'Call offered a substitute for what had been rejected, in the following words:

"The state shall be divided by law into a convenient number of circuits ; a president shall be appointed of the courts in each circuit, who, during his continuance in office, shall reside therein ; the president and judges, any two of whom shall be a quorum, shall compose the court of common pleas. [The appointment of the common plea judges is previously provided for.]

"The judges of the court of common pleas, in each county shall, by virtue of their offices, be justices of oyer and terminer and general gaol delivery, for the trial of capital and other offenders therein ; any three of the said judges, the president being one, shall be a quorum.

"The party accused, as well as the state, may, under such regulations as may be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the supreme court.

"The several courts of common pleas shall, besides the powers heretofore usually exercised by them, have the powers of a court of chancery so far as relates to ——.

"The judges of the courts of common pleas shall, within their respective counties, have the like powers with the judges of the supreme court, to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

"The president of the court in each circuit, within such circuit, and the judges of the court of common pleas, within their respective counties, shall be justices of the peace, so far as relates to criminal matters."

As there had been no question taken on the report of the committee, but only on amendments offered, it was thought not to be in order to receive it as proposed. The mover then offered it as a substitute for the first section of the report.

Mr. M'Call observed, that all the propositions which had been offered on the subject had failed, and it was, perhaps, inexpedient to propose another. He was anxious, however, that some method should be devised that was calculated both to increase the respectability of the courts of common pleas, and, at the same time, to relieve the supreme court. If the subject was left to the legislature, and no provision made in the constitution, he was satisfied that nothing would be done to effect these objects. As organized now, the gentlemen

of the profession carry their business almost exclusively into the supreme court, and for the obvious reason that they get more fees.

The question was then taken on Mr. M'Call's motion, and lost.

Mr. E. Williams inquired whether there was any thing before the committee that had not been rejected?

Col. Young offered the following, as a substitute for the report of the committee:

"The legislature shall have power to establish from time to time, such courts of law subordinate to the supreme court, and such courts of equity, subordinate to the court of chancery, as the public good may require."

Some remarks were made in explanation, by Mr. Young.

Mr. Van Buren objected to the proposition of the gentleman from Saratoga, as being perfectly nugatory.

Mr. E. Williams contended that the proposition of the gentleman from Saratoga was wholly unnecessary, as the legislature possesses all the power which it proposed to give. Unfortunately every proposition which comes from gentlemen of the bar is rejected. If any thing is to be done upon this subject, the lawyers must have no hand in it. It has been stated by some of the lay members, that they will oppose every thing that comes from such a source. Yesterday a committee was appointed, consisting of seven, six of whom were lawyers, and their report was this morning annihilated. Every project offered since had been successively strangled. Mr. W. could not, therefore, support it, because if he did, it would be lost; and he believed the gentleman from Saratoga was too respectable a lawyer to have his project carry.

Mr. Wheeler replied, when the question was taken on the proposition offered by Mr. Young, and carried.

Mr. Van Buren said they had not even then advanced a single step, as the same provision exactly was contained in the constitution.

Mr. Dodge said he believed it to be the wish of nine-tenths of the members to do nothing more than to leave the judiciary as they found it.

Mr. Van Buren. Then why not come out openly and manfully, and say so, and not degrade ourselves by adopting insignificant amendments?

Mr. Dodge. If gentlemen submit propositions to the house, we are obliged to vote on them, whether insignificant or not.

Mr. I. Sutherland then offered the following as an addition, which he thought would obviate the difficulties. It certainly is the sense of this Convention, that the chancellor and judges of the highest tribunal should be rendered independent.

"And the judges of such court, to whom the power of trying issues joined in the supreme court shall be given, shall hold their offices during good behaviour, until the age of sixty years."

Mr. Hogeboom was of opinion that we had courts enough already, and he should vote against every proposition for increasing the number.

The question on Mr. Sutherland's amendment was then taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Bacon, Baker, Barlow, Beckwith, Briggs, Brooks, Burroughs, Carpenter, Carver, Case, R. Clarke, Clyde, Collins, Day, Dodge, Dubois, Dyckman, Eastwood, Fenton, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Huntington, Hurd, Knowles, Lansing, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Munro, Park, Pike, Porter, Price, Radcliff, Reeve, Richards, Rockwell, Root, Ross, Sage, Sanders, N. Sanford, R. Sandford, Schenck, Seely, Sharpe, I. Smith, Starkweather, Steele, Swift, Taylor, Townley, Townsend, Tripp, Tuttle, Van Fleet, Van Horne, Verbryck, E. Webster, Woods, Woodward, Wooster, Young—74.

AYES—Messrs. Birdseye, Breese, Buel, Child, Cramer, Duer, Edwards, Jay, Jones, Kent, King, Lawrence, Lefferts, Nelson, Paulding, Pitcher, Pum-

pelly, Rhinelander, Rogers, Russell, Sheldon, I. Sutherland, Sylvester, Tallmadge, Ten Eyck, Van Buren, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Wendover, Wheaton, Wheeler, E. Williams, N. Williams, Yates—35.

The committee then rose and reported progress, without asking leave to sit again. Adjourned.

FRIDAY, OCTOBER 26, 1821.

Prayer by the Rev. Dr. CHESTER. Minutes of yesterday read and approved.

THE APPOINTING POWER.

The Convention then resolved itself into a committee of the whole on the appointing power—Mr. Lawrence in the chair.

The report of the select committee, of which Mr. Radcliff was chairman, that was presented yesterday on that part of the appointing power which had not been acted upon in committee of the whole, was again read, as follows:

I. That as many coroners as the legislature shall direct for each county, including the city and county of New-York, shall be elected, in the same manner as sheriffs are directed to be elected; and shall hold their offices for the same term and be removable in like manner.

II. That masters in chancery, and the register and assistant registers of the said court, shall be appointed by the governor, with the consent of the senate; that the masters in chancery shall be removable by the senate, on the recommendation of the governor; and that the register and assistant registers, hold their offices for three years, unless sooner removed by the senate, on the like recommendation of the governor.

III. That examiners in chancery be appointed by the court of chancery, and hold their offices during the pleasure of the said court.

IV. That the clerk of the court of oyer and terminer, and general sessions of the peace, in and for the city and county of New-York, be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of the said court.

V. That the third section of the report of the committee of the whole, on the subject of the power of appointment to office, be so amended, as to insert, after the word "York," in the third line, the words, "and the clerk of the sittings or circuits, in the city of New-York."

[The effect of this amendment will be to make the office of clerk of the sittings in New-York elective, in the same manner, and to hold his office for the same term, as by that section is provided in regard to county clerks.]

VI. That justices of the peace, in and for the city and county of New-York, to wit: The special justices, the justices of the marine court, and the assistant justices, and their clerks respectively, which now exist in said city, or such other justices in their stead; or such justices of courts, inferior to the courts of common pleas and general sessions of the peace in said city, as may from time to time be created or established by the legislature, shall be appointed by the corporation of said city; and hold their offices for the same term that justices of the peace, in the other counties of this state, are entitled to hold the same, and be removable in like manner.

VII. That the officers of the health department for the city and port of New-York, shall be appointed by the corporation of said city, except the officer now called the health commissioner, or any officer or officers who may be hereafter created in his stead, or assigned to perform the duties now belonging to the said health commissioner; which health commissioner, or other officer or officers, shall be appointed by the governor, with the consent of the senate, and be removable by the senate, on the recommendation of the governor; and that the legislature may provide, in any manner they shall see fit, for the receipt, disbursement, and appropriation of all the moneys and property, whether real or personal, received by, or belonging to, or which may be received by, or belong to, the said health department.

VIII. That the harbour masters of said city, and the commissioner of excise therein, or such other excise officer or officers, as may be created in said city, shall be appointed by the corporation thereof, and hold their offices during their pleasure.

IX. That the wardens and pilots of the port of New-York, and clerks of the said wardens, shall be appointed within the said city, in such manner as the legislature may from time to time direct.

MR. WHEATON said, that having had the honour to be a member of the select committee, to whom this subject was referred, he would state, for the information of the house, that it was the intention of the committee to place the office of coroner on the same footing with that of sheriff. It was an office of a similar character; and being known to the common law, and recognized in the constitution of this state, it became necessary to provide for the appointment. The Convention had determined, contrary to his opinion, that the sheriffs should be elected by the people. This might, or might not, be reversed, when the report of the committee of the whole was acted on in the house. But in the mean time it was thought expedient to put the coroner's office on the same ground with that of sheriff: since both were originally chosen by popular election, and the coroner was to this day chosen in England by the freeholders of the county.

GEN. TALLMADGE offered the following proposition:

"That justices of the peace shall be (except in the city and county of New-York,) ex officio coroners, and perform the duties of that office."

The proposition was discussed by the mover and Mr. Young, when the question on the amendment was taken and lost.

After a few remarks from Mr. Fairlie on the clause as reported,

JUDGE VAN NESS offered the following proposition:

"That coroners shall be elected in the same manner as justices of the peace." Lost.

MR. NELSON offered a proposition, making the supervisors coroners ex officio, which, after some discussion, was withdrawn.

MR. I. SUTHERLAND then offered the following substitute:

"That one coroner may be elected in each town, at the annual town election, to hold his office for the term of one year."

MR. YATES moved to amend the proposition by inserting the words "*or ward*" after the word "*town.*" Carried.

MR. MUNRO made a few remarks in favour of the amendment.

GEN. ROOT could perceive no necessity of having a coroner in every town. Too many of these officers had heretofore been appointed. They were so numerous, and so greedy of a fee, that a person could not die in peace in the city of New-York, without being disturbed by coroners, especially until the fees had been reduced. There had been too many of them, and the office had been made use of as a sort of small change, to pay up petty political debts. In Delaware they were as thick as locusts; and the office had been treated with contempt from being made too common. He hoped that hereafter there would not be more than two or three to a county, to be appointed on the same ticket with the sheriff.

MR ROSS was in favour of uniting the offices of coroner and commissioner, and with that view, offered the following proposition:

"Who shall be ex officio a commissioner to take acknowledgments, and who, before he enters upon the duties of his office, shall be required to take and subscribe the oath of office before the clerk of the county.

COL. YOUNG remarked that in large cities a greater number of coroners was necessary than in the country. In the city of New-York the office might be-

come as lucrative as that of clerk of the county. He moved the following amendment to Mr. Sutherland's proposition—"except in the city and county of New-York."

Mr. Dodge thought the office of coroner was more important than had been considered; and if the number, should be diminished from fifteen or twenty, to four or five in each county, it would then be elevated from its degraded situation. The rage had been so great for office, that any thing by that name was eagerly grasped; and many men had been appointed to that office totally unfit for it, not being able to read or write. But when we consider these officers as conservators of the peace, and as acting at many times as the sheriffs of the county, having executions in their hands for collection to a very large amount, and even against the sheriff himself; we cannot consider the office altogether unimportant, Let there be but four or five in each county, (except the large cities,) and you will then induce men of respectability to accept the office.

The gentleman from Genesee (Mr. Ross) had proposed giving to the coroner the office of commissioner, which was, in itself, a very important office, as on a faithful discharge of the duties of that office, depended the title of vast quantities of real estate. Mr. D. was totally opposed to this proposition, and considered the original report as far superior to it: if the number should be reduced, the office would become respectable.

A few remarks were made by Mr. I. Sutherland, when the question on Mr. Young's amendment was taken and lost.

The question was then taken on the proposition of Mr. Sutherland, which was rejected.

Col. Young moved to strike out the word, "elected," and insert "appointed." Carried.

Mr. E. Williams remarked, that the effect of this motion would be to make sheriffs appointable instead of elective.

Mr. Sharpe wished to meet this question at once. He was prepared to vote. We had determined to make the office of sheriff elective: the intelligence had gone forth through the state, without giving dissatisfaction, and he regretted to see an attempt made to reverse our proceedings.

Mr. Ward moved to insert after the word, "direct," the words, "not exceeding four." Carried.

Mr. Tompkins moved to amend the clause, so as to read, "elected or appointed," which was carried, and the clause passed without further amendment.

The second section was read.

Mr. Wheaton moved the following amendment:

"To strike out in the first and second lines the words, "register and assistant register of the court," so as to leave the appointment of these officers to the chancellor, where it was now vested by the present constitution."

Chief Justice Spencer was opposed to the amendment. He thought any provision on this subject wholly unnecessary.

Mr. Radcliff, from the committee, explained the reasons upon which this clause of the report was grounded.

Mr. Van Buren thought we were on this subject altering the constitution for the worse. He was in favour of striking out "register," in the second clause, and of omitting the third section altogether.

Mr. Buel made some remarks on the appointment of examiners in chancery; and

Mr. N. Williams explained his reasons for dissenting from the clause under discussion.

Chancellor Kent felt an anxiety, that the examiners in chancery should not be appointed by the chancellor. They were intimately connected with the office of chancellor, and acted as deputies to him, and their appointment was an undesirable burthen to be placed upon the chancellor. With respect to the offices of register and assistant register, they were of less importance, being merely clerks of that court.

Mr. Cramer moved to strike out "register," and insert "examiners in chancery," in the second section.

Mr. Munro moved to insert before the word, "that," in the first line, the following words:

"That the legislature may direct the appointment of an accomptant to the court of chancery in the city of New-York, and another in the city of Albany, who shall have the charge of all monies deposited in the court of chancery, and shall be appointed by the governor with the consent of the senate, and shall be required to give competent security for the faithful execution of his office."

Mr. Briggs was willing the court should have the appointment of these officers, if it would assume the responsibility.

Mr. Radcliff expatiated upon the importance of these offices, when the question on Mr. Cramer's amendment was taken, and carried in the affirmative.

At the suggestion of Mr. Sutherland, Mr. Munro withdrew his amendment.

Mr. E. Williams moved sundry amendments, so as to make the remainder of the section conform to the first clause, which were adopted.

Mr. Wheaton moved to add the following words at the end of the clause:

"The number of masters in chancery shall not exceed four for the city and county of New-York, two for the city and county of Albany, and one for each of the other cities and counties in this state; but whenever the chancellor shall certify to the legislature that the business of the court requires an increase of their number specifying particularly where required, the legislature may authorize by law an additional number."

This amendment, after some conversation between the mover and Messrs. Tallmadge and Van Buren, was negatived.

The third section of the report was stricken out, and the fourth passed without amendment.

The fifth section was read.

Some remarks were made by Messrs. Radcliff, Munro, Sharpe, Buel, and others, when the question on the fifth section was taken and lost.

Mr. Munro offered the following proposition:

"That the office of clerk of the sittings and circuit courts in the city of New-York, be executed by the clerk of the supreme court in that city." Lost.

Mr. Jay offered the following substitute for the fifth section:

"That such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the several courts, or by the governor, with the consent of the senate, as may be directed by the legislature." Adopted.

Sixth section read.

Mr. Wheeler moved to amend by striking out the word "corporation," and inserting "senate, on the recommendation of the governor." He spoke for sometime in favour of the amendment, and against swelling the already enormous power of the corporation, by giving to it the appointment of these officers.

Mr. Radcliff contended that the patronage of the corporation was by no means so great as had been represented. All he required was equality of rights between the city and country.

Col. Young thought there should be a distinction between officers, whose jurisdiction was extensive, such as health officers, &c. and those of a local character. He would confine the power of the corporation to the appointment of those of the latter description.

Mr. Radcliff further explained, when

Mr. Wheeler withdrew his amendment.

Col. Young moved to strike out the words, "justices of the marine court."

Mr. Jay supported the motion, when the question thereon was put and carried.

Gen. Tallmadge moved to strike out the words, "or such other justices in their stead; or such justices of courts, inferior to the courts of common pleas and general sessions of the peace in said city, as may from time to time be created or established by the legislature. Carried.

The sixth section then passed as amended.

The seventh section was then read.

Mr. Tompkins opposed it on the grounds that he presented, when the question was before the committee on a former day. The board of health, he said, were a corporation, and might be so increased, that the health officer, the health commissioner, and the resident physician, who were ex-officio members of it, would have no effectual influence in that body. He thought this power was enough for the city of New-York. He referred to the statute, and observed that it shewed conclusively that the state ought not to part with the power of appointing their own trustees.

Mr. Edwards. The object which the legislature had in view in creating the health department in the city of New-York, was the preservation of its health. From its local situation, it is peculiarly exposed to the introduction of pestilence from abroad, and it is well known that it has been often scourged and almost desolated by its ravages. Where, then, sir, can the power of appointing the health officer of that city be most discreetly lodged to answer the ends for which they were created—in the hands of the fathers of that city, or of an appointing power one hundred and fifty miles off? I confess, sir, I am at a loss to know how to make this subject more plain than it must appear from a simple statement of facts. As well, sir, might the head of a family be required to submit to his neighbour the appointment of his family physician.

It is objected by the honourable gentleman from Richmond, (Mr. Tompkins,) that the health officer ought not to be appointed in that city, because he is called upon to decide between foreigners and the city, and can subject vessels to quarantine. This, sir, is a most fallacious argument. Is not that city supported principally by commerce, and does not the interest of its inhabitants require that the approach to it should be as unrestricted as is compatible with their safety? There is, sir, no need of an arbitrator.

Mr. Edwards then proceeded to give an account of the origin and progress of the marine hospital, which is the property of this state, and the purposes for which it was created. He disclaimed all wish to subject it to the control of the city, and argued that the vesting of the offices of the health department in the city did not necessarily do it, because the legislature could at pleasure regulate their powers.

The vesting of the appointment of this officer in the city, is not urged for any emolument which it will be to it. Not a cent of the fees of the office will go into the city treasury. The fees are considerable—but it is a perilous station. Of the six physicians who have held it prior to the present incumbent, five have fallen victims to pestilence introduced from abroad. Our motive is, to secure for ever a skilful and vigilant officer; one who will answer the purpose for which the office is created. In whatever light this proposition may be now held, yet if the time should come when, owing to the ignorance or inattention of a health officer, whom you refused to vest that city with the appointment of, pestilence should ravage it, it will be then matter of serious regret that you withheld from them the power of guarding themselves.

Col. Young hoped that the section would not pass. If gentlemen would take the trouble to read the acts which had been passed by our legislature, on this subject, they would find that the corporation of the city of New-York possessed power enough, in the management of their business. The legislature had gone on from time to time to give power, till it had become enormous. The health officers were completely under the control of the mayor and aldermen of the city; notwithstanding any decision that may be made by them, the corporation have the power of confirming or rejecting it. The property at the quarantine ground was paid for by the state; and the state had at different times contributed to the support of that establishment, when a decline of commerce

had rendered it incompetent to support itself. The corporation of that city have the power of imposing a tax, on vessels from all nations on earth; and when a vessel is compelled to lie by, and overhaul her cargo, they are to be told that it is by the authority of the city of New-York, without their even knowing that there is a state of New-York.

He was not willing that that city should possess this unlimited control over the vessels of all nations, as long as the expense had been borne by the state, and the property still remained the state's. The act to which he had referred was sufficiently broad on this subject; and when it passed the senate at the last session, there was not a word said by the gentleman who represented that city in the senate, that it ought to be broader. He should therefore oppose the clause.

The subject was further discussed by Messrs. Radcliff, Van Buren, Briggs, Fairlie, Ross, and N. Sanford, when the whole of the seventh section was stricken out.

The 8th and 9th sections, after being discussed by Messrs. Young, Sharpe and Van Buren, were also rejected, and the appointment of the offices contemplated by the three last sections, was left to the disposal of the legislature.

The next question in order was stated to be the seventh section of the original report.

On motion, the words " and who are not included in the resolution relative to the city of New-York," were stricken out, and the section as amended was carried.

Mr. Jay offered a proposition authorizing the appointment of a select and common council in the city of New-York, which, after some remarks by the mover, and Messrs. Fairlie, Sharpe, N. Sanford, and Spencer, was withdrawn.

Mr. Jay made a further proposition to provide for the appointment and tenure of office of the justices of the marine court, which was opposed by Mr. Edwards, and lost.

Mr. Duer moved to reconsider the second section of the report of Mr. Radcliff, for the purpose of striking out the word *governor*, to insert the word *chancellor*, in order that the office of master in chancery might not be exposed to the fluctuations of party. Motion to re-consider *refused.*

The committee then rose and reported progress, without asking leave to sit again.

In Convention, the President named the following gentlemen to compose the committee of seven, to whom was assigned the arrangement of the amendments adopted by this Convention, viz: Messrs. Yates, King, Kent, Root, Van Buren, Lawrence, and I. Sutherland.

Mr. Fairlie asked leave to present an ordinance, providing for submitting the amendments to the constitution, agreed to by the Convention, which was read, and on motion of Mr. Edwards, referred to the above named committee of seven.

Mr. E. Williams moved that when this Convention adjourn, it adjourn to Monday next. His reasons were, that the unfinished business had been referred to select committees.

The motion was supported by the mover, and Messrs. Van Buren and Burroughs, and opposed by Messrs. Bacon, Sharpe, Briggs, Dodge, and Eastwood, when on motion of Mr. Root, the Convention adjourned to 9 o'clock tomorrow morning.

SATURDAY, OCTOBER 27, 1821.

The Convention assembled as usual. Prayer by the Rev. Dr. Cumming. The minutes of yesterday were then read and approved.

The committee of the whole having reported to the Convention the results of their deliberations upon all the subjects that had been committed to them in the reports of the several select committees, the said reports were declared to be the matters next in order for the consideration of the Convention.

THE COUNCIL OF REVISION.

The report of the committee of the whole on the subject of the council of revision, was then read by the secretary, in the words following:

This Convention, in the name, and by the authority of the people of this state, doth ordain, determine, and declare, That every bill which shall have passed the house of assembly and the senate, shall, before it become a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated; who shall enter the objections at large on the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections to the other house; by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become 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, and against, the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days, (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it; unless the legislature shall by their adjournment, prevent its return; in which case it shall be a law, unless returned on the first day of their next meeting.

Col. Young moved to add to the end of the report the following words: "No bill shall pass either branch of the legislature on the last day of any session."

Mr. King remarked, that the legislature were competent to adopt such a regulation; and it appeared to him unnecessary to insert such a clause in the constitution.

Mr. Fairlie made a few remarks against the amendment, and pointed out the embarrassments it would create.

Mr. Wendover said he hoped this amendment would not prevail. It might sometimes be very important to the community that bills should so pass: more particularly in time of war, it might not only be indispensably necessary to pass, but to originate laws, for the public interest, and for the common defence.

Col. Young, to obviate the objections suggested by the gentleman from New-York (Mr. Fairlie) proposed to amend the clause by inserting the words, "except such bills as are returned by the governor with objections."

The Chief Justice suggested some objections to the amendment. It would be difficult for the speaker to retain a quorum for one day after the members were ready to go home.

The question on the amendment was then taken and lost.

Mr. Wheaton moved to amend this amendment by striking out the following words in the 27th and 28th lines: "in which case it shall be a law, unless returned on the first day of their next meeting," and inserting the following; "*shall not be a law.*" Mr. W. stated his object to be to make the provision respecting bills, the return of which within ten days was prevented by the adjournment of the legislature, correspond with that in the constitution of the United States, which seemed to him founded in wisdom. If congress by their adjournment prevent the return of a bill by the President, it does not become a law. Nor was it fit that it should. The regulation proposed by the committee of the whole, would enable the governor to keep in his own breast the secret whether a particular bill would or would not ultimately become the law of the land; and might enable those by whom he was surrounded to profit by that knowledge, which they alone would possess, to the disadvantage of the public in general. Such a practice would draw after it many of the evils of the secret legislation of despotic governments, and would certainly be abused to corrupt purposes in many cases where private rights were involved, or private interests affected by measures of a general and public character.

The subject was further discussed by Messrs. King, Spencer, and Van Buren, when the question was taken on the amendment and carried.

The whole report as amended was then passed.

THE LEGISLATIVE YEAR.

The report of the committee of the whole, on the subject of establishing the commencement of the legislative year, was then read as follows:

And be it further ordained by the people of this state, That the general election for governor, lieutenant-governor, senators, and members of assembly, shall be held at such time, in the month of October or November, as the legislature shall direct, and the persons so elected, shall, on the first day of January following, be entitled to the exercise of their respective functions in virtue of such election.

Mr. Wendover proposed the following amendment: after the word "following," insert "or on the second, if the first shall come on Sunday."

In offering this amendment, he was desirous to see this solemn assembly conform to what he hoped was the settled sentiment of ninety-nine hundredths of a Christian community: that secular business ought not to be done on the Christian sabbath. When this subject was before the committee of the whole, it was said, that if the first day of January should happen on Sunday, the governor elect might do as the president of the United States did at the commencement of his present term, delay being sworn into office on the constitutional day, being Sunday, till the next day; but, sir, we well know, (said Mr. W.) that in following precedents, men are generally disposed to seek those most in point and nearest home. I recollect at present but one instance on which the day designated by the present constitution for the governor to enter on the duties of his office, happened on Sunday, which was in the year 1804, and it is a fact that the governor elect did take the oath of office on that day. To avoid the like occurrence in future, I wish this amendment to obtain, and particularly as the elections for governor will be more frequent, and a like result more often occur. I should have proposed an amendment, to commence the governor's term, and the legislative year, on the first Monday in January, but to this it has been objected, that one governor and legislature would in some cases remain in office six days longer than others; if this objection is thought by gentlemen to have any weight, which for myself I do not perceive, I wish to obviate the difficulty by the amendment now proposed, and thereby remove the real or supposed necessity of administering oaths of office on that day. By the present constitution, the governor enters into office on the first day of July, and the members of the legislature on the first Monday of the same month: I can see no reason why the term for all, should not begin either on the first Monday in January, or to defer till Monday what is improper to be done on Sunday.

Gen. Root opposed the motion. He thought the gentleman from New-York was too scrupulous on the subject. The constitution of the United States provides that the legislature of the general government shall commence on the fourth day of March, and no injury had resulted from the provision. If it were fixed otherwise than to a day certain, it was evident that some governors would hold their office for a longer term than others. Our courts had decided that an affidavit taken on the Sabbath was valid—doubtless on the principle, that the better day the better deed. It rather increased than diminished the obligation of the oath which is taken. Marriages often take place on Sunday, and are considered equally binding as if solemnized on a week day; and this was but the solemnization of a marriage between the governor and the people.

The question was then put, and Mr. Wendover's motion lost; when the whole report passed without amendment.

THE EXECUTIVE DEPARTMENT.

The report of the committee of the whole on the executive department, was then read by sections.

Mr. Edwards moved to amend the first section by striking out "year," after the word "every," and inserting "three years," so as to read "once in every three years," as a term of service for the governor.

Mr. Briggs called for the ayes and noes.

Mr. Fairlie was in favour of the amendment. Public sentiment did not require a change in this particular. Complaints had been made of governors, but none of the term of service.

Col. Young was opposed to the motion. It would give to the officers of the different departments, similar terms, and might produce combinations.

Mr. Edwards thereupon modified his motion, by proposing to insert the word *two* instead of *three*.

Mr. Lansing had heretofore voted for an annual election, before he knew what powers would be given to the governor. Those powers having been defined, he should be in favour of extending the term to two years.

Gen. Root hoped this question would not be taken in as great a hurry as had seemed to be expected. Some amendments had been adopted in consequence of the governor's term being reduced, which would not have been the case had it been supposed that his term would be more than one year. He would not have had the power of nominating so many officers to the senate, but from the consideration that he would be annually returned to the people, by which any abuse of that privilege might be corrected. When a man has reason conscientiously to complain of the conduct of the executive, he wishes him out of office, and some one in his stead; and the man who is well satisfied with him, will be willing to continue him for life. Then where the election is annual, all have an opportunity of expressing their wishes, and the will of the majority is gratified. It is not improbable that our executive may conduct in such a manner, as to render himself obnoxious to the majority at the end of one year; and if so, the voice of the minority is to predominate for the second year.

Here Mr. Root related the circumstances which led to the calling of a Convention in 1801, which were, that the executive assumed an exclusive right to the nomination of all officers to be appointed by the council, of which he was a member. His nominations were such as the council could not concur in, and it finally went so far that the governor would not meet with the council; and in many counties, where commissions had expired, they were obliged to remain without a magistracy for many months. This was an evil which was severely felt, and called loudly for a remedy. The remedy was, the calling of a Convention, and in that Convention vesting in the members of the council an equal right of nomination. We have been told that was an error; if it was, it was one that received the undivided approbation of all true republicans, and the condemnation of that party which terminated its career of domination in this state soon after.

Mr. R. reminded the Convention of many other evils that had resulted, and which probably would result, from being shackled with a governor, who, from improper conduct, might become unpopular among the people. He hoped we should never have a recurrence of all the evils that we had heretofore experienced from this source. It might hereafter be the case, that the executive would be opposed to a great majority of the senate, as well as of the people; and having the exclusive right of nomination, he could force upon the people such officers as he should think proper, or compel them to do without any. Those who, by improper conduct, should have lost the confidence of the people, might be permitted to continue in office, for the want of the governor's recommendation to the senate for their removal.

We are told that the governor should be elected for two years, that he may be independent. Independent of what? Independent of the people for whom he was elected.

Mr. R. said he did not like this kind of executive and judicial independence—he was in favour of a different kind of independence. He wanted these officers so situated, that if they did not discharge their duty for the good of the people, that they could be removed when a majority should think proper, even at the end of one year.

Mr. King spoke in reply. In the application of the term *independent* to the executive, was not intended an independence of the *people*, but a situation in which the governor might not be the mere instrument of the *legislature*. Mr. K. contended that within the short period of an annual term, it was not to be expected that the governor could acquire all that information which was ne-

cessary to enable him to preside with usefulness and credit to himself or to the state.

The period of this Convention is, in many respects, of peculiar character. The states have, of late, turned their attention to the provisions of their respective constitutions, with the view of revising and altering the same; and the temper which has manifested itself on this subject, instead of respecting the authority of ancient maxims, seems inclined to weaken them; and to draw the truths which they contain, into doubt, in order to introduce principles and doctrines which are without the sanction of experience in similar circumstances; but which, though wanting in this authority, may be supposed to justify alterations in the constitution, under which we have lived so long, and with so much cause of contentment.

This spirit should be indulged with great caution, lest it lead us on to dangerous innovations. Governments are the fruit of experience: they can safely rest on those political truths to which time has added his infallible sanction; and it is only the wise combination and distribution of these truths, which distinguish our free constitutions from all others.

Under our present constitution, we have not only enjoyed a large share of freedom, but we have, in a surprising degree, increased in population, wealth, and the useful arts. If it be true, of late years, that our prosperity is somewhat affected; the condition of that quarter of the world with which we have much intercourse, having undergone a great change; and the effect thereof having been, to impair the advantages in agriculture and commerce, that, during the wars in Europe, we enjoyed. But we are not to suffer ourselves to be misled in respect to the cause of these disadvantages; much less to become persuaded that they have proceeded from a defect in any of the provisions of our own constitution.

These reflections deserve grave consideration, not only on our own account, but because our proceedings, which are attentively observed by other states, may have an influence on their measures.

It is also of infinite consequence, that our government should exhibit to foreign nations, not only in the approved maxims of our constitutions, but in the stability and wisdom of their administration, that freedom and peace and justice may safely be confided to republics.

If, in this country, we fail in the establishment and support of free governments; if a people like the American people, without the prejudices, manners and habits of men living under different forms of government; if, with our education and discipline in practical equality, with laws which are the same for all, which in life equally protect all, and at death divide and distribute equally among the next of kin, the estates of all; if such a people want moderation and wisdom to establish, preserve, and perpetuate free governments, where, and among whom, may we hope for their existence?

An appeal is at this time made to our patriotism; for the struggle has commenced between the representative principle, and that of the ancient governments in Europe; between the right of the people to be consulted in the making of laws, and the claims of those who assert that they alone possess, and are responsible to God for, the power of governing mankind. At present, the question depends on the strength of public opinion; though it may, and probably will, be decided by the sword. We should, therefore, constantly recollect, that the wise administration of our free governments operates in favour of the principles of freedom, encouraging and strengthening its friends; and that the smallest insecurity, disorder, or confusion, that happens among us, are seized upon, magnified, and employed in favour of those who prefer despotic rulers.

An old and constant charge made against republics, is the instability of their institutions; and this is urged with great confidence in modern times.—Whatever failures in the cause of reform we may have witnessed, our country has hitherto remained both firm and faithful. Some alterations have been made in the constitutions of the other states, and some such are desired in our own constitution; but these are few, and only such as experience has proved to be defective: these, and only these, should be amended; and all other parts of the

constitution, against which no complaint has been made, should remain untouched.

Thus, the term of the governor, not having been objected to, ought to remain without change.—Since the meeting of the Convention, and not before, an opinion has been expressed in favour of a shorter term, and the example of some of our neighbouring states is urged in favour of such abridgment; but as we have been so long accustomed to choose a governor for three years; as no dissatisfaction has been expressed against the duration of the term; and arguments of authority are not yet urged in favour of a change, it would evince a temper of instability, were we to alter the term, especially by reducing the same from three years to one year.

It is proposed to increase the powers of the governor, by giving him the qualified veto on the passage of laws, heretofore vested in the council of revision: and moreover, to vest in him the exclusive nomination of the judicial, and other great officers of state, formerly vested in the council of appointment; and thus, by increasing the duties of the office, it is said to be more expedient to shorten his term of service—the reverse of which would seem to be more reasonable.

For, the duration of the term should be such as to enable the governor to become acquainted with the duties of his office. The increase of those duties will require more time to learn them, and cannot therefore be an argument in favour of the abridgment of the term.

If the term be short, the duties will be imperfectly understood; and in the new branches, which bring the governor into collision with the legislature, as he may be likely to incur their displeasure, he will fail in executing his duties. His nominations to office, and his objections to improper laws, will be unfaithfully executed: the chiefs of the legislature will dictate the former, and their influence over his approaching election, will overawe the latter.

No state appoints for less than one year, and some states appoint for four years. The time should correspond with the extent of the state, the number of its inhabitants, the variety of their employments, and the portion of power confided to the executive.

In a state of limited territory, population and riches, in which the power of appointment is in the legislature, and the executive veto is merely nominal, little public inconvenience would arise from frequent executive elections.

The governor, in such state, would not only have little to learn, but little to do; and a short term and frequent choice would do little harm.

But, in this extensive, populous, and opulent state, with more than one half of its inhabitants recently united to the old stock, the whole composing a people whose habits in government are not yet melted into uniformity; with an executive that, for nearly half a century, has, without complaint, been elected only once in three years; what sufficient motive can induce us to prefer an annual election, and thus to reduce the term of the governor to one year.

It should be recollected, that it is not for the sake of the person who is governor, that a longer term is desired; but on account of the people, for whose benefit alone the governor is chosen. If the power confided to the governor is less likely to be executed with independence and fidelity, should his term be reduced to a year, than would be the case if it be of longer duration, how can we, in justice to the people, shorten the term?

Where the governors are annually elected, the whole legislature are also chosen every year. In this state it is otherwise: the senate are for four years; and if the governor is to exercise a check on the legislature, his term of office should be such as to enable him to do so, otherwise the legislature will control the governor.

The chief argument urged in favour of annual election, is, that such election will secure a more efficient responsibility. The increase of the powers of the governor, is also made use of, in favour of shortening the executive term of office.

By responsibility, we mean the obligation due from one to whom power is given by another, to account for the faithful execution of his trust. Thus, all private and public agents are responsible to those who employ them; but, in

the one case as well as the other, time and opportunity must be allowed for the due consideration and performance of the duties of the agent. The time and opportunity should bear a due proportion to the magnitude of the trust, or of the duties to be performed. If the duties are few and unimportant, the time for their execution may, without injury, be short; if otherwise, and the confided power be great and complicated, sufficient opportunity should be allowed to the agent, not only to become acquainted with such duties, but for the discharge of the same; and it would be unwise to interpose to require an account before such opportunity shall have been afforded.

What would have been the effect of the annual election of governor during the late war; what may it not be in some future war? The governor not only exercised the duties of his office, but, in addition, a great military authority was confided to him by the United States; and this at a period when we were invaded, or apprehended we should be, on both the frontiers of the state,—on that which lies on the ocean, as well as that which borders on the lakes. Would an election, in the midst of the campaign, have been prudent: would it have been safe? The political year will commence with the calendar year, and our elections are to be held in October or November. Suppose the governor again to be employed as he was during the late war; admit that the people may be divided on the expediency of the war, or concerning the re-election of the governor; he entered on office in January, and the election is to follow in October or November; will the governor have had sufficient time and opportunity, in the ten months during which he shall have been in office, to shew that he is worthy, or unworthy, of being re-elected?

He commands the militia called into the public service, and is in the midst of the campaign; ought he, in these circumstances, to be called to account, or is it expedient that he should be obliged to attend to his re-election?

Another view of this subject may be taken, which cannot be disregarded by men of moderation. The present term for which the governor is chosen, is three years: by a vote of the Convention, this term is to be reduced; and the question now is, whether it shall be for two years, or for one. Those, who were satisfied with the term of three years, will be content to reduce it to two years. And will not those, who prefer an annual election, yield something on their part; and, by mutual concession, may we not reasonably expect, that we shall all unite in establishing the governor's term at two years?

Chief Justice Spencer did not rise to enter into a discussion of the subject; but merely to remind the committee of the manner in which this question had been twice before decided. It was first determined that the term should be two years; and afterwards, at a time when fifteen or twenty members were absent, it was determined that it should be one year; but he was satisfied that a majority of the members now in the house were in favour of two years. With respect to the remarks of the gentleman from Delaware, he was satisfied they would not be considered conclusive on this subject.

Col. Young remarked that when the question was first presented he was absent. He had afterwards voted for one year as the term of the governor's service; but although he had sometimes hesitated on the question, yet when he reflected that the power of the governor could only be brought to bear upon the officers of the state during the first year of his term, there was reason to apprehend that before the second year came round, the relations between him and the people would be so little effective, that he would be entirely forgotten, and that he might not be thus absolutely forgotten, he was in favour of an annual election. Sir, said he, before the two years shall have expired, many of the officers of your distant counties will not know who the governor is.

Mr. Ross. Permit me, sir, to express my views, in a few words, on the subject of the executive term, now before the Convention. I entirely accord in the sentiments expressed by my honourable friend from Saratoga, (Col. Young,) that it is all important that we proceed with the most deliberate caution, in revising what we have heretofore adopted in committee of the whole. Sir, we have now arrived at the most critical period of our labours, and we are admonished by every consideration of prudence, and regard to the future interest of the public, to avoid precipitancy, in passing our last review, and final decisions.

It may be true, that much useless debate has already been indulged, and that our constituents are tired of our protracted session, as has been alleged. But, sir, I do not believe they are so impatient to have us return, as to overlook their true interests, by a hasty revision of our proceedings. I hope we shall not be too impatient. Nothing ought to deter us from endeavouring to correct whatever may have been erroneous in our former votes.

Fixing the governor's term of office at one year, instead of three as heretofore, I cannot but consider as a measure unwise and inexpedient. I am not aware, that such a measure has been called for; nor do I believe, that the term, as fixed by the old constitution, was ever the subject of complaint. But since we have already conferred additional authority upon the chief magistrate, by giving him alone a qualified negative upon legislation, and by enlarging his discretionary powers of pardon, and it is proposed, also, to give him the sole power of nominating to office, I think we may, with great propriety, reduce the term for which he shall hereafter be elected, to two years; by which means he will oftener be accountable to the people for any unfaithful execution of those trusts. In vibrating to opposite extremes, it would be well to rest at the true point of moderation; and after duly appreciating all that has been urged in favour of the different periods, I am persuaded that two years is the true medium at which the duration of that office may be safely and permanently fixed. I did believe this to be a correct opinion, and I have since seen no cause to change it. To return it to a less term than two years, would expose us to a temporizing system of policy, inconsistent with an independent and able management of the various and multiplied concerns of this great state. Instead of entering upon any extensive or liberal plans of solid improvements, calculated to promote the permanent interests of the people of this state, we should find the governor engaged in such schemes as would best answer his re-election. Indeed, one year would not afford sufficient time to accomplish any objects by which the electors would be furnished with a full and satisfactory test of his capacity, disposition, or fitness to serve them; and, therefore, they would not be so fully prepared to judge of the propriety or impropriety of his being re-elected. Various other considerations, if duly estimated, I think are entitled to weight in giving a preference to a term of two years, instead of an annual election of our first magistrate.

I will notice one to which I am not aware that any reference has been made: I mean the importance of some stability in the tenure of that officer, so far as to preserve an equal rank and influence in our sister states. Other states, extensive in territory and resources, are growing up, and none of them of comparative extent and population with our own, elect their chief magistrates for a less period than from two to four years. Our executive will hardly be known or heard of in other states, if the duration of his office is to continue but for a single year. A longer period is, therefore, necessary, if we wish to preserve the relative weight and influence to which this state is entitled in the national confederacy. Besides, sir, the term of two years can never endanger the safety and rights of the people, but will give additional security, by rendering the measures of government more stable and uniform, less liable to caprice and agitations arising from frequent changes in systems of policy. I therefore hope, that the amendment for inserting two years instead of one, presented by the gentleman from New-York, (Mr. Edwards,) will succeed. I cannot but believe, that its adoption is best calculated to promote the public interest.

Mr. Fairlie replied to Mr. Young, and really thought, that the gentleman's last argument was not quite so sound as usual. If there was danger that the people would forget who the governor was, it would be best to put it on the mile-stones, and guide-boards, and perhaps, in the almanack.

The question, on making the term two years, was then taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Bacon, Baker, Beckwith, Breese, Buel, Carpenter, Child, D. Clark, Clyde, Dubois, Eastwood, Edwards, Fairlie, Fish, Hallock, Hees, Hunter, Huntington, Hurd, Jones, Kent, King, Lansing, Lawrence, Lefferts, Millikin, Moore, Munro, Nelson, Paulding, Porter, Pumpelly, Radcliff, Rhinelander, Rogers, Rose, Ross, Russell, Sage, N. Sanford, Schenck, Seaman,

Seely, Sharpe, I. Smith, R. Smith, Spencer, Steele, I. Sutherland, Sylvester, Tallmadge, Ten Eyck, Tuttle, Van Buren, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, E. Williams, N. Williams, Woodward, Yates.—67.

NOES.—Messrs. Barlow, Birdseye, Briggs, Brinkerhoff, Brooks, Burroughs, Carver, Case, R. Clarke, Collins, Cramer, Day, Dodge, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunting, Knowles, A. Livingston, P. R. Livingston, M'Call, Park, Pike, Price, Reeve, Richards, Rockwell, Root, Rosebrugh, R. Sandford, Sheldon, Starkweather, Swift, Taylor, Townley, Townsend, Tripp, Van Fleet, E. Webster, Wheeler, Woods, Wooster, Young. —47.

Mr. Fairlie, moved to strike out the words "natural born," and insert "native." His reasons for the motion were, that natural born, might refer to the manner of birth; but native expressed the place. Carried.

Mr. Wheeler moved to strike out the words "most numerous branch of the legislature." Carried.

Chief Justice Spencer moved the following amendment; after the word "thereof," in the end of the section, add the following clause:

"But if two, or more, shall be equal, and highest in votes, for governor, one of them shall be chosen, by joint ballot of both houses of the legislature; and if two, or more, shall be equal, and highest in votes, for lieutenant-governor, one of them, shall in like manner, be chosen lieutenant-governor."

After some discussion by the mover and Mr. Briggs, the amendment was adopted.

The Chief Justice further moved to add the following clause:—"Contested elections for governor or lieutenant-governor, shall be determined in such manner as shall be prescribed by law."

It was supported by the mover and Mr. E. Williams, and opposed by Messrs. Munro, Van Buren, and Young, and finally withdrawn by the mover.

The second section was read.

Mr. Van Buren moved to insert after the word "assembly" the words, "or the senate only." The amendment was supported by the mover and Mr. Young, upon the ground that it might be necessary for the senate, with whom was lodged a part of the appointing power, to be convened without the other branch of the legislature. Carried.

On motion of Mr. Young, the words "land and naval forces" were stricken out, and the words of the present constitution, on the subject of the governor's title, restored.

The third section was read.

Mr. Wheaton moved to strike out the words, "so far as may respect his department."

The governor, (said Mr. W.) ought not to be confined in his communications to the legislature, as to the condition of the state, to matters respecting the executive department. It might, and often would, become necessary for him to give them information respecting the judicial department, respecting the general administration of justice, and whatever else concerned the great interests of the state in every department.

Mr. Van Buren opposed the motion, which was lost.

The question on the third section, as amended, was then put and carried.

The 4th section was read, and after much discussion, the words "and he shall hold no other office or public trust whatever" were, on motion of Mr. Young, stricken out, when the section passed without further amendment.

The question was then taken on the whole report as amended, and carried in the following words:—

"*And this Convention doth further, in the name, and by the authority, of the people of this state, ordain, determine, and declare,* That the supreme executive power and authority of this state shall be vested in a governor; and that statedly, once in every two years, and as often as the office of governor shall become vacant, a

freeholder, who shall be a native born citizen of the United States, and who shall have resided in this state five years next and immediately preceding his election, unless he shall have been absent on public business of the United States, or of this state, and who shall have attained the age of thirty years, shall be, by ballot, elected governor; which election shall always be held at the times and places of choosing representatives in assembly, for each respective county; and the person having the greatest number of votes within the state, shall be governor thereof.

"But if two or more shall be equal, and highest in votes for governor, one of them shall be chosen by joint ballot of both houses of the legislature; and if two or more shall be equal, and highest in votes for lieutenant-governor, one of them shall, in like manner, be chosen lieutenant-governor."

"That the governor shall continue in office two years, and shall by virtue of his office be general and commander in chief of all the militia, and admiral of the navy, of this state; that he shall have power to convene the senate and assembly, or the senate only, on extraordinary occasions; and, at his discretion, to grant reprieves and pardons to persons convicted of crimes, other than treason, and in cases of impeachment; in which cases, except that of impeachment, he may suspend the execution of the sentence until it shall be reported to the legislature, at their subsequent meeting; and they will either pardon, or direct the execution of the criminal, or grant a further reprieve.

"That it shall be the duty of the governor to inform the legislature, by message, at every session, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare, and prosperity; to correspond with the government of other states, and of the United States; to transact all necessary business with the officers of government, civil and military; to take care that the laws are faithfully executed to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature.

"That the governor shall, at stated periods, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected."

FUTURE AMENDMENTS.

The report of the committee of the whole, on the expediency of making provisions for future alterations or amendments to the constitution of this state, was then read.

Gen. Tallmadge moved to strike out the word "*six*," and insert "*three*," as the term for notifying the proposed amendments. Carried.

The report, as amended, was then passed in the following words:

"*And be it further ordained, in the name, and by the authority of the people of this state*, That if, at any time hereafter, any specific amendment or amendments to the constitution shall be proposed in the senate or assembly, and agreed to by two thirds of the members elected to each of the two houses; such proposed amendment or amendments, shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published for three months previous to the time of making such choice; and if in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of the senators and members of assembly elected, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner, and at such time, as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of assembly voting thereon, they shall become part of the constitution of this state."

THE ELECTIVE FRANCHISE.

The report of the committee of the whole on the right of suffrage, and the qualifications of persons to be elected, was next read by sections.

On motion of Mr. Briggs, it was decided to divide the section, omitting the proviso.

Mr. Wheaton moved to strike out that part of the section, which makes working on the highways a qualification for voting. The question on the amendment was taken by ayes and noes, and decided as follows:

NOES—Messrs. Baker, Barlow, Beckwith, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dodge, Dubois, Eastwood, Fenton, Ferris, Fish, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Huntington, Hurd, Knowles, Lansing, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, Pitcher, Porter, Price, Pumpelly, Reeve, Richards, Rockwell, Rosebrugh, Ross, Russell, Sage, N. Sanford, Schenck, Seely, Sheldon, Starkweather, I. Sutherland, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, Van Ness, Verbryck, Ward, E. Webster, E. Williams, N. Williams, Wooster, Young—81.

AYES—Messrs. Bacon, Birdseye, Buel, Edwards, Fairlie, Hees, Jones, Kent, King, Lawrence, Munro, Paulding, Radcliff, Rhinelander, Rogers Rose, Seaman, Sharpe, I. Smith, Spencer, Sylvester, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Wendover, Wheaton, Woods, Woodward—29.

Mr. Birdseye moved to strike out the words "or shall be by law exempted from taxation." Lost.

Mr. Spencer moved to strike out the words "within that year," and to insert the words "for the year next preceding."

Much discussion ensued, in which Messrs. Young, R. Clarke, Briggs, Van Buren, Fairlie, Sharpe and Nelson participated.

Mr. Spencer withdrew his motion, and Mr. Van Buren offered a substitute, which was rejected.

Mr. Fairlie moved to insert after the word "state," the following clause: "or who shall be excused in consequence of being firemen in the several cities, towns and villages in this state." Carried.

Mr. Lansing moved to strike out that part of the section which makes doing military duty a qualification for voting.

A long debate ensued, in which Messrs. Lansing, Sharpe, E. Williams, I. Sutherland, Eastwood, Van Buren, and Tallmadge took part, when the question on Mr. Lansing's motion was taken, by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Barlow, Beckwith, Breese, Briggs, Brooks, Buel, Burroughs, Carver, Case, Child, D. Clark, R. Clarke, Collins, Cramer, Day, Dodge, Dubois, Eastwood, Edwards, Fairlie, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Huntington, Hurd, Knowles, Lawrence, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Munro, Nelson, Park, Pike, Pitcher, Porter, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, Sage, N. Sanford, Schenck, Seely, Sharpe, Sheldon, I. Smith, Starkweather, Steele, I. Sutherland, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Ness, Verbryck, Ward, E. Webster, Wendover, E. Williams, N. Williams, Wooster, Young—84.

AYES—Messrs. Bacon, Birdseye, Duer, Fish, Hees, Jones, Kent, King, Lansing, Paulding, Rhinelander, Rogers, Rose, R. Smith, Spencer, Sylvester, Van Horne, J. R. Van Rensselaer, Van Vechten, Woods, Woodworth—21.

Mr. E. Williams then moved to strike out all that part of the section, which makes doing military duty and working on the highway qualifications for voting.

Mr. President decided that the motion was not in order, as those clauses had both passed in Convention.

Mr. King offered the following proposition, to be inserted in lieu of the first paragraph of the first section.

"That every male citizen of full age, who shall have personally resided within one of the counties of this state for six months immediately preceding the day of

election, and who, during the time aforesaid, shall have possessed a legal or equitable interest in land, of the value of fifty dollars, within the said county, or have rented a tenement therein of the value of five dollars, and have, within one year next preceding, been rated, and actually paid a state or county tax, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all offices that now are or hereafter shall be elective by the people."

The motion was supported by Messrs. King, Birdseye, and I. Sutherland, and opposed by Messrs. Tallmadge, Burroughs, Young and Cramer.

Mr. P. R. Livingston rose, not to enter into the debate, but merely to suggest to the honourable mover, an evil which would result from the adoption of this amendment. It would disfranchise thousands in the state, who might be in every other respect qualified, except that of having rented a tenement for the last six months. There would be many young men, and many gentlemen who did not keep house, but board out with their families at public houses, that would be excluded from the right of voting by this provision.

The question was then taken by ayes and noes, and decided in the negative as follows:

NOES—Messrs. Barlow, Beckwith, Breese, Briggs, Brooks, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dodge, Dubois, Eastwood, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunting, Hurd, Knowles, Lansing, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, Pitcher, Price, Pumpelly, Reeve, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, Sage, N. Sandford, Schenck, Seaman, Seely, Sheldon, I. Smith, Starkweather, Steele, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Verbryck, Ward, E. Webster, Wendover, N. Williams, Wooster, Young—76.

AYES.—Messrs. Bacon, Birdseye, Duer, Edwards, Fairlie, Fish, Hallock, Hees, Hunter, Huntington, Jones, Kent, King, Lawrence, Munro, Paulding, Porter, Rhinelander, Rogers, Rose, Sharpe, Spencer, I. Sutherland, Sylvester, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Wheaton, E. Williams, Woods, Woodward.—33.

Mr. I. Sutherland renewed the proposition of Mr. King, modified by inserting after the word, "tax," the words, "either in money, or by labour on the highway."

Mr. Wendover remarked, that under the extreme difficulty of hearing in the part of the room in which he had the misfortune to sit, he might mistake the application of the present proposition; but if he understood it, the effect would be, to admit all to vote who worked on the highway, and at the same time to exclude many of our valuable fellow citizens, a great proportion of whom are householders, and have every qualification as electors, except that they are exempted by law from paying taxes: he meant the artillerymen. If it was intended to exclude these, while their duties are vastly more burdensome than those of persons who work on the roads, he could not conceive how gentlemen could support the proposition; for his part he must vote against it, and hoped it would not be adopted.

The motion was further opposed by Messrs. King and Root, and was decided in the negative by ayes and noes, as follows:

NOES.—Messrs. Baker, Beckwith, Breese, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Collins, Cramer, Day, Dodge, Dubois, Eastwood, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunting, Hurd, King, Knowles, Lansing, Lawrence, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, Pitcher, Price, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rockwell, Rogers, Root, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seaman, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Starkweather, Steele, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend,

Tripp, Tuttle, Van Buren, Van Fleet, Verbryck, E. Webster, Wendover, N. Williams, Woods, Wooster, Young.—33.

AYES.—Messrs. Bacon, Birdseye, Buel, Duer, Edwards, Hunter, Huntington, Kent, Munro, Ross, Spencer, I. Sutherland, Sylvester, Van Horne, Van Ness, J. R. Van Rensselaer, Ward, Wheaton, E. Williams, Woodward.—20.

MR. BIRDSEYE moved to strike out the words, "in consequence of being firemen," in the amendment offered by Mr. Fairlie. His object was to include those, who are excused from military duty, in consequence of being employed on the canals.

The PRESIDENT decided, that the motion was not in order: the proper way would be to reconsider the vote on Mr. Fairlie's amendment.

COL. YOUNG thereupon moved to reconsider the same; but before the question was taken thereon, the Convention, on motion of MR. Ward, adjourned.

MONDAY, OCTOBER 29, 1821.

Prayer by the Rev. MR. DAVIS. Minutes of Saturday read and approved.

THE ELECTIVE FRANCHISE.

The first section of the report of the committee of the whole on the right of suffrage, and the qualifications of persons to be elected, was declared to be in order; and the question, arising on the motion of Mr. Young, to reconsider the clause adopted on the suggestion of Mr. Fairlie, relative to firemen, was first presented.

COL. Young advocated his motion, but remarked, that he should not insist strenuously upon it, if it was calculated to exclude a numerous and valuable class of citizens. But believing, as he did, that it would affect but few, inasmuch as the firemen would generally come within the scope of the other qualifications, he did not think it worth while to encumber the constitution with it.

MR. SHARPE said, that there were 1500 or 2000 firemen in the city of New-York, almost exclusively a respectable and responsible class of young men, who would not at all suffer by a comparison with those who would be admitted on the ground of the highway qualification.

MR. RADCLIFF remarked that there was no difficulty in ascertaining by the inspectors of elections, who were and who were not firemen, as they are required to be registered by statute; and the intervention of an oath need not be required.

The motion to reconsider was then taken and lost.

On motion of MR. YOUNG, the words "or district" were stricken out, and the words "or" inserted before "county;" so that the elector be required to have resided in the town or county.

The first part of the section to the words "*from taxation*" in the ninth line inclusive, was then put and carried without a division.

The next paragraph to the words "according to law, in the twenty-first line, was then taken by ayes and noes and decided in the affirmative as follows:

AYES—Messrs. Baker, Breese, Briggs, Brooks, Burroughs, Carpenter, Carver, Case, Child, D. Clark, Clyde, Collins, Day, Dodge, Dubois, Eastwood, Fenton, Ferris, Frost, Hallock, Howe, Humphrey, Hunt, Huntington, Hurd, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Munro, Nelson, Park, Pike, Porter, Price, Pumpelly, Radcliff, Richards, Rockwell, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Seely, Sharpe, Sheldon, I Smith, R. Smith, Starkweather, Steele, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Tripp, Tuttle, Van Buren, Van Fleet, Verbryck, Ward, E. Webster, Wendover, N. Williams, Wooster, Yates, Young—71.

NOES—Messrs. Birdseye, Duer, Edwards, Fairlie, Hees, Hunter, Jones, Kent, King, Lansing, Lawrence, Paulding, Rhinelander, Rogers, Rose, Seaman, Spencer, Stagg, I. Sutherland, Sylvester, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Wheaton, E. Williams, Woods, Woodward—29.

On the residue of the section to the proviso. Carried.

ON THE PROVISO.

Mr. R. Smith moved as an additional qualification to persons of colour, to insert after the word "thereon," in the thirty-second line, the words "or other taxable property to the value of five hundred dollars."

Mr. Fairlie hoped the subject would be suffered to rest in silence. It had been deliberately discussed, and distinctly voted upon.

Chief Justice Spencer was in favour of the amendment. He thought for the sake of consistency, it ought to be adopted. We had decided that real estate was not to have higher privileges than personal; and although he was not disposed to disturb the compromise on the question, yet he thought an accumulation of property to that amount, was such an evidence of the honesty and industry of the black man, that it ought to entitle him to vote, in the same manner as if his colour was white.

Mr. Briggs said that a black man was not taxable for personal property to whatever amount, and therefore ought not to vote.

Col. Young replied to the objection of inconsistency, and observed that the amendment would not get rid of the objection—for the man that can acquire $250 of personal property, could by the same act acquire the same amount of real property.

The question was then put on the amendment and lost.

Mr. Duer moved to strike out from the last part of the section the following words: "And shall have been, within the year next preceding the election, assessed, and shall have actually paid a tax to the town or county." Carried.

The question on the proviso was then put and carried; and the section and proviso, as amended, were passed.

Mr. E. Williams moved to re-consider the question on the proviso. Agreed to.

Mr. Yates proposed to strike out the words "of age and residence." Withdrawn.

Judge Van Ness moved a substitute for the proviso, which, after some modification, was passed as follows:—

"*Provided*, That no man of colour, unless he shall have been for three years a citizen of this state, and for one year next preceding any election been seized and possessed of a freehold estate of the value of $250, over and above all debts and incumbrances charged thereon, shall be entitled to vote in the election of any officer of the government: and provided further, That no man of colour shall be subject to direct taxation, unless he shall be seized and possessed of such real estate as aforesaid."

The question was then taken on the whole section, including the proviso, and carried in the affirmative as follows:—

AYES—Messrs. Beckwith, Birdseye, Brooks, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Collins, Cramer, Day, Dodge, Dubois, Duer, Eastwood, Ferris, Frost, Hallock, Howe, Humphrey, Hurd, Lawrence, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, Porter, Price, Pumpelly, Radcliff, Richards, Rockwell, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Starkweather, Steele, I. Sutherland, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Ward, E. Webster, Wendover, N. Williams, Woodward, Yates, Young—72.

NOES—Messrs. Briggs, Edwards, Fairlie, Fenton, Hees, Hogeboom, Hunt, Hunter, Huntington, Jones, Kent, King, Knowles, Lansing, Munro, Paulding, Rhinelander, Rogers, Rose, Seaman, Spencer, Stagg, Sylvester, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Wheaton, E. Williams, Woods, Wooster—32.

The second and third sections were then read, and respectively passed, as follows :

" II. Laws may be passed, excluding from the right of suffrage persons who have been, or may be, convicted of infamous crimes.

" III. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage, hereby established."

Mr. Lansing moved to amend the fourth section by inserting, after the word " abolished," the following words :—" but that all persons who shall have been, previous to the ratification of this constitution, entitled to vote according to the existing laws of this state, shall be electors.

The question was put and lost, and the section passed as follows :—

" IV. The existing qualifications for the right of suffrage, are abolished. The oath, or affirmation of allegiance, which may now be required from an elector, is abolished."

The fifth and sixth sections were then read, and respectively passed, as follows :—

" V. No citizen, entitled to the right of suffrage, shall be arrested for any civil cause, on any day or days of an election.

" VI. All elections by the citizens, shall be by ballot, except such town officers, as may by law be directed to be otherwise chosen."

The seventh section was then read.

Mr. Swift moved to insert after the word "judicial," in the second line, the words " except such inferior officers as may by law be excepted," so as to enable the legislature to provide for dispensing with oaths of office to town and other subordinate officers. Carried.

The question was then taken on the seventh section as amended, and the same was passed.

Mr. Ward moved to reconsider the fifth section. Agreed to.

Mr. E. Williams moved to add at the end of the section the following words : " while going to, attending upon, or returning from any such election." Withdrawn.

Mr. Hogeboom moved to insert after the word " arrested," the words " in the county where he resides." Lost.

Mr. E. Williams moved to strike out the whole section. Carried.

The report of the committee of the whole then passed in the Convention as follows :

" I. Every male citizen of the age of twenty-one years, who shall have been one year an inhabitant of this state, preceding the day of the election, and for the last six months a resident of the town or county where he may offer his vote, and shall have paid a tax to the state or county within the year next preceding the election, assessed upon his real or personal property ; or shall be by law exempted from taxation ; or being armed and equipped according to law, shall have performed within that year military duty in the militia of this state : And also every male citizen of the age of twenty-one years, who shall have been for three years next preceding such election an inhabitant of this state, and for the last year a resident in the town or county where he may offer his vote ; and shall have been within the last year assessed to labour upon the public highways, and shall have performed the labour, or paid an equivalent therefor, according to law, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all offices that now are, or hereafter may be, elective by the people : *Provided*, that no man of colour, unless he shall have been for three years a citizen of this state, and for one year next preceding any election, be seised and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, shall be entitled to vote in the election of any officer of the government ; and provided further, that no man of colour shall be subject to direct taxation, unless he shall be seised and possessed of such real estate as aforesaid.

"II. Laws may be passed, excluding from the right of suffrage persons who have been, or may be, convicted of infamous crimes.

"III. Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established.

"IV. The existing qualifications for the right of suffrage are abolished. The oath or affirmation of allegiance, which may now be required from an elector is abolished.

"V. All elections by the citizens shall be by ballot, except such town officers as may by law be directed to be otherwise chosen.

"VI. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be excepted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation :

'I do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the state of New-York; and that I will faithfully discharge the duties of the office of according to the best of my ability.'

"And no other declaration, or test, shall be required, as a qualification for any office, or public trust."

LEGISLATIVE DEPARTMENT.

The report of the committee of the whole on the legislative department, was then read by section.

On the First Section.

That the state shall be divided into eight districts, to be called senate districts, each of which shall choose four senators.

The first district to consist of the counties of Suffolk, Queens, Kings, Richmond and New-York.

The second district to consist of the counties of Westchester, Putnam, Dutchess, Rockland, Orange, Ulster and Sullivan.

The third district to consist of the counties of Greene, Columbia, Albany, Rensselaer, Schoharie and Schenectady.

The fourth district to consist of the counties of Saratoga, Montgomery, Hamilton, Washington, Warren, Clinton, Essex, Franklin and St. Lawrence.

The fifth district to consist of the counties of Herkimer, Oneida, Madison, Oswego, Lewis and Jefferson.

The sixth district to consist of the counties of Delaware, Otsego, Chenango, Broome, Cortland, Tompkins and Tioga.

The seventh district to consist of the counties of Onondaga, Cayuga, Seneca and Ontario.

The eighth district to consist of the counties of Steuben, Livingston, Monroe, Genesee, Niagara, Erie, Allegany, Cattaraugus and Chautauque.

And as soon as the senate shall meet after the first election to be held in pursuance of this provision, they shall cause the senators to be divided, by lot, into four classes of eight in each, so that every district shall have one senator of each class, the classes to be numbered one, two, three and four; and the seats of the first class shall be vacated at the end of the first year, of the second class at the end of the second year, of the third class at the end of the third year, of the fourth class at the end of the fourth year, and so on continually, in order that one senator be annually elected in each senate district.

Mr. Van Buren moved to amend the first section, by striking out Ulster and Sullivan from the second senatorial district, and Columbia from the third, and to transpose these counties.

Mr. V. B. remarked that with regard to contiguity of territory, it would be found that the south-east part of Westchester was nearly if not quite as remote from the extreme of Sullivan, as the latter county would be from Rensselaer. It was also desirable to form the districts in such manner as to divide them as far as is practicable by the Hudson's river, where the counties lay near to it. The difficulty of crossing, especially late in the fall, when our elections are hereafter to be held, must be obvious. By the proposed arrangement, all the

third district will lie on the west side of the river, except Rensselaer, which can be approached at all seasons. It would also be more contiguous in regard to communication than the district proposed by the committee. The facilities afforded by the river for commercial and political intercourse, were such, that the extremes proposed by this arrangement would be nearer for all practical purposes, than to retain the form which the committee have proposed—for what earthly connexion, he would ask, was there between the counties of Sullivan and Westchester?

The conveniences of communication, therefore, were altogether in favour of the amendment he had proposed. But were they balanced, there was another consideration that must turn the scale in its favour. He alluded to the *population*, which, by reference to the tables, as exhibited in the report of the committee, it would be seen, would be essentially equalized by the arrangement he had proposed. It was a matter of general wish and of common right, that the same degree of efficiency should be given to the votes of electors of one district, as in another, and this could only be attained by securing the greatest practicable equality in the respective districts.

Mr. E. Williams remarked, that he rose for the purpose of stating his objections to the plan proposed by the gentleman from Otsego, (Mr. V. B.) and to say a few words in behalf of the county of Columbia. She will do her duty, (said Mr. W.) wherever she is placed. Unless you annex her to Massachusetts she will be an aid to her friends, and an annoyance to her enemies. When gentlemen introduced their proposition for a division into eight districts, and display their map in the lobby, they gave a virtual pledge, that it should not be afterwards politically modified; and he would add that the principal cause of the abandonment of the favourite project for thirty-two districts, was the map. But it was to be feared that gentlemen were now about to be *out-mapped.*

The question is not so much of *population* as of *territory.* What is the fact? In the second district we shall have a narrow territory, extending from within six miles of the City-Hall in New-York, to within twelve miles of the Capitol in Albany:—and in the third district you have a Gerrymander. The monster will curl its tail on the mountains of Jersey—coil along the borders of Pennsylvania; wind its scaly and hideous carcass between the crooked lines of counties, and finally thrust its head into Bennington. Disguise it as you will, the object will be visible and the people of this state will understand that it is to exclude federalism from every senatorial district. This may be just. It may be magnanimous. And gentlemen must do as they please as they hold the power.

The motion was further supported by Messrs. Duer, Buel, and I. Sutherland, and opposed by Messrs. Hunter, D. Clark, Sharpe, and Van Vechten, when the question was taken by ayes and noes, and decided in the negative, as follows:—

NOES.—Messrs. Baker, Barlow, Beckwith, Birdseye, Brooks, Burroughs, Child, D. Clark, Collins, Day, Dodge, Dubois, Edwards, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Hunter, Huntington, Jones, Kent, King, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Porter, Price, Radcliff, Rhinelander, Rockwell, Rogers, Rose, Ross, Sage, N. Sanford, R. Sandford, Seaman, Seely, Sharpe, I. Smith, R. Smith, Spencer, Stagg, Steele, Swift, Sylvester, Tallmadge, Ten Eyck, Townley, Townsend, Van Fleet, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, E. Webster, Wendover, Wheaton, E. Williams, Woodward, Wooster, Young.—69.

AYES.—Messrs. Briggs, Buel, Carver, Case, R. Clarke, Cramer, Duer, Eastwood, Fenton, Humphrey, Hunt, Knowles, Lansing, Lawrence, Lefferts, Nelson, Park, Pike, Pitcher, Pumpelly, Reeve, Richards, Russell, Schenck, Starkweather, I. Sutherland, Taylor, Tuttle, Van Buren, Ward, N. Williams, Woods, Yates.—36.

Judge Van Ness moved to strike out the first section of the report, and to insert the following substitute:

" The state shall be divided by the legislature into districts, to be called senate districts, to be composed, of contiguous territory, and that one senator shall be elec-

ted in each district which division shall be made as soon as may be after the ratification of this amendment by the people, provided that it shall be competent for the legislature, in case it shall be deemed expedient to form the city and county of New-York and such contiguous county or counties as they may deem fit and proper into one district, for the purpose of electing senators, to reduce the number of said districts to , and to authorize the election of senators in the said disrtict, to be composed of the city and county of New-York and such contiguous county or counties as aforesaid; and provided further, that until such division shall be made by the legislature, senators shall be elected by the same number of districts as they are at present elected."

Mr. I. Sutherland proposed to the mover to vary the substitute, so as to read "not less than eight nor more than sixteen."

Judge Van Ness did not assent to the suggestion, and after a few remarks from the mover, and Messrs, Birdseye and King, the question on the substitute was taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Barlow, Beckwith, Birdseye, Briggs, Brooks, Burroughs, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dodge, Duer, Eastwood, Edwards, Fairlie, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunting, King, Knowles, Lansing, Lawrence, Lefferts, P. R. Livingston, M'Call, Moore, Nelson, Park, Paulding, Pike, Pitcher, Porter, Price, Pumpelly, Radcliff, Richards, Rockwell, Rogers, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seaman, Sharpe, Sheldon, Stagg, Starkweather, Steele, I. Sutherland, Swift, Tallmadge, Taylor, Ten Eyck, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, S. Van Rensselaer, Verbryck, Ward, E. Webster, Wendover, Wheaton, N. Williams, Woodward, Wooster, Yates, Young.—83.

AYES—Messrs. Buel, Fish, Hees, Hunter, Huntington, Hurd, Jones, Kent, Millikin, Rhinelander, Rose, Seely, I. Smith, R. Smith, Spencer, Sylvester, Townley, Van Ness, J. R. Van Rensselaer, Van Vechten, E. Williams, Woods—21.

Mr. Yates then renewed the motion of the gentleman from Schoharie, (Mr. Sutherland) to amend the substitute so as to read, not less than eight nor more than sixteen, leaving the state to be divided into districts by the legislature, after the next census shall be taken.

The motion was supported by Messrs. Yates and E. Williams, and opposed by Messrs. King, Tallmadge, Fairlie, Briggs, and Burroughs, when the question was taken and lost.

On motion of Mr. King, the question on the first section as far as to the word "Chautauque," embracing the eight district, was taken and carried.

Mr. N. Williams moved to add the following clause to the end of the first section:

"Provided, that no person shall be eligible to the office of senator, who shall not have attained the age of thirty years, and been five years a resident of this state, and who shall not, at the time of his election, be seized of a freehold estate in his own right within this state, of the value of one thousand dollars, over and above all debts and incumbrances charged thereon."

Mr. W. called for the ayes and noes, and the question was decided in the affirmative, as follows:

AYES—Messrs. Baker, Beckwith, Birdseye, Breese, Brooks, Buel, Burroughs, Child, D. Clark, Clyde, Day, Dodge, Dubois, Fairlie, Ferris, Hees, Hunter, Hunting, Hurd, Kent, Knowles, Lansing, P. R. Livingston, Nelson, Pitcher, Porter, Pumpelly, Radcliff, Rhinelander, Richards, Rogers, Rose, Sage, Seaman, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Spencer, Sylvester, Townsend, Tripp, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Verbryck, Ward, E. Webster, Wendover, Wheaton, E. Williams, N. Williams, Woods, Woodward—56.

NOES—Messrs. Barlow, Briggs, Carpenter, Carver, Collins, Cramer, Eastwood, Edwards, Fenton, Fish, Frost, Hallock, Hogeboom, Howe, Hum-

phrey, Hunt, Huntington, King, Lawrence, Lefferts, A. Livingston, M'Call, Millikin, Moore, Park, Paulding, Pike, Price, Rockwell, Ross, Russell, N. Sanford, R. Sandford, Schenck, Stagg, Starkweather, I. Sutherland, Swift, Tallmadge, Ten Eyck, Van Buren, Van Fleet, Van Horne, Wooster, Yates, Young—46.

The residue of the second section, and the whole section as amended, then passed.

The second section was then read as follows:

"II. That a census of the inhabitants of the state, excluding aliens, paupers, convicts and persons of colour not taxed, be taken under the direction of the legislature, in the year 1825, and at the end of every ten years thereafter; and that the said districts shall be so altered by the legislature at the first session after the return of every census, that each senate district shall contain, as nearly as may be, an equal number of such inhabitants; which districts shall remain unaltered until the return of another census. Provided, that every district shall at all times consist of contiguous territory, and that no county shall be divided in the formation of a senate district."

Chief Justice Spencer was opposed to the vagueness of the word "convicts" and on motion of Mr. E. Williams, the word was stricken out.

On motion of Mr. Wendover, the words "excluding aliens, paupers, and persons of colour not taxed," were transferred so as to follow the word "inhabitants" in the 10th line.

Chief Justice Spencer moved the following amendment:

"After 'districts,' in 10th line, 2d section, strike out 'shall remain unaltered until the return of another census,' and insert 'but the legislature, on the return of every census, may alter the said districts, and they shall never be diminished, but may be increased."

The amendment was supported by the mover and Mr. E. Williams, and opposed by Messrs. Van Buren, Briggs, and Young, when the question was taken and lost, and the second section passed as amended.

The third section was read as follows:

III. That on the taking the census in 1825, the number of the members of assembly shall be fixed at one hundred and twenty-eight, and shall never exceed that number."

Mr. Wheaton offered the following amendment:

"And that the same shall be apportioned among the several counties of the state, as nearly as may be, according to the number of inhabitants in each county, excluding aliens, paupers, and persons of colour not taxed, which apportionment shall remain unaltered until the return of another census; provided, that every county heretofore established and separately organized, shall be entitled to one member."

Mr. Russell offered the following addition to Mr. Wheaton's proviso:

"IV. And that in future no new county shall be erected, unless its population shall entitle it to a member."

After some discussion, both the amendment and the proviso were adopted.

Mr. King moved to strike out the words "on the taking the census in 1825." Carried.

The section was then passed as amended.

The fourth section was read and passed without amendment, as follows:

"Any bill may originate in either house of the legislature; and bills passed by one house may be amended by the other."

The fifth section was then read as follows :

V. The members of the legislature shall receive a compensation for their services, to be ascertained by law, and paid out of the public treasury ; but no increase of the compensation shall take effect during the year in which it shall have been made. And no law shall be passed increasing the wages of the legislature beyond the sum of three dollars per day, unless by a majority of all the members elected to both branches of the legislature ; and unless it shall be limited as to its continuance, to two years after the passage thereof, and the yeas and noes shall be taken thereon, and entered on the journals."

Mr. Fairlie moved to strike out all that part of the section which relates to the limitation of the pay of the members of the legislature.

The question was taken on the said motion of Mr. Fairlie, by ayes and noes, and decided in the negative, as follows :

NOES—Messrs. Baker, Barlow, Beckwith, Buel, Burroughs, Case, Child, D. Clark, Clyde, Cramer, Day, Dodge, Dubois, Duer, Eastwood, Edwards, Fish, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Hurd, Jones, Knowles, Lansing, Lawrence, A. Livingston, P. R. Livingston, Millikin, Moore, Munro, Pike, Pitcher, Richards, Rockwell, Rogers, Rose, N. Sanford, Seaman, Sheldon, R. Smith, Spencer, Starkweather, Steele, I. Sutherland, Sylvester, Tallmadge, Taylor, Townley, Townsend, Tripp, Tuttle, Van Horne, Van Ness, J. R. Van Rensselaer, Verbryck, E. Williams, Woods, Woodward, Wooster, Yates, Young—66.

AYES—Messrs. Birdseye, Breese, Briggs, Brooks, Carpenter, Carver, R. Clarke, Collins, Fairlie, Fenton, Ferris, Frost, Huntington, Kent, King, Lefferts, M'Call, Nelson, Park, Paulding, Porter, Price, Pumpelly, Radcliff, Rhinelander, Rosebrugh, Ross, Russell, Sage, R. Sandford, Schenck, Seely, Sharpe, I. Smith, Stagg, Swift, Ten Eyck, Van Fleet, S. Van Rensselaer, Van Vechten, Ward, E. Webster, Wendover, Wheaton, N. Williams—46.

The section was then adopted.

The sixth section was read, as follows :

" VI. No member of the legislature shall receive any civil appointment from the governor and senate, or from the legislature, during the term for which he shall have been elected."

Mr. Birdseye moved to amend the section, so as to read " no member of the legislature shall receive *or hold* any civil appointment, &c. Lost, and the section passed without amendment.

The 7th and 8th sections (prohibiting U. S. officers from holding seats in the legislature, and relative to the power of impeachment) also passed without amendment.

The 9th section (relative to appropriations of money for private or local purposes, and incorporations) was read.

Col. Young moved to insert the word " property" after " monies." Carried.

Mr. Wheaton moved to amend by inserting " or renewing charters of" after the word " creating," (so that no charter or incorporation shall hereafter be granted or renewed, without the consent of two-thirds of the members of both houses.) Carried, and the section passed.

The 10th section was read, and one or two amendments were offered ; but before they were acted on, the convention adjourned.

TUESDAY, OCTOBER 30, 1821.

The Convention met as usual. Prayer by the Rev. Mr. De Witt. Minutes of yesterday read and approved.

THE LEGISLATIVE DEPARTMENT.

The tenth section of the report of the committee of the whole on the legislative department, in relation to the appropriation and confirmation of certain property of the state, pledged to the common school and canal funds, was read, and the consideration of the motion made yesterday by Mr. N. Williams, to strike out the words "of all lands that may hereafter be acquired by the state," was resumed, and lost.

Mr. Wheaton offered the following resolution:

"*Resolved*, That a committee of members be appointed, to apportion the whole number of members of the assembly among the several counties of the state, as nearly as may be, according to the number of inhabitants in each county, excluding aliens, paupers, and persons of colour not taxed."

Mr. W. stated the object of his motion to be, to make an apportionment of the 128 members of the assembly according to the new rule for the apportionment of the representation which had been adopted by the house. The legislature might not be in session at the time when the amendments to the constitution would be adopted by the people. There was the same necessity for now making the apportionment under which the first house of assembly should be chosen, as there was to make that regulation as to the senate. The amendment could not be carried into effect without it.

On motion of Judge Van Ness, the resolution was laid on the table.

Mr. Richards moved to strike out all that part of the section which relates to the pledge of the public lands for the support of common schools. Lost.

Mr. Starkweather proposed to strike out the words "be acquired," in the third line, and to insert in lieu thereof the word "revert." Lost.

Col. Young moved to strike out the words "in an average," after the word "less," with a view to leave to the legislature the regulation of the rates of toll on different commodities, which may hereafter pass through the canals.

The amendment was supported by the mover and Messrs. N. Williams and Ross, and opposed by Messrs. Briggs, King, and Birdseye, when Mr. Young varied the phraseology by substituting the words "in the whole." The motion was put and lost.

Mr. Ward moved to insert after the words "twenty-one," in the fifteenth line, the words "except gypsum and fuel."

Mr. King observed, that if the pledge was to be violated in one part, it might be in another; and if any part was left to the discretion of the legislature, the whole ought to be. If we mean to adhere to the engagement, it is proper that we should not break in upon it in any particular.

Mr. Sharpe also opposed the motion. Withdrawn.

Gen. J. R. Van Rensselaer moved to insert after the words "twenty-one," in the fifteenth line, the words,

"Except on fire wood, fencing stuff, on which the present rate of tolls may be diminished or removed entirely; but the amount which would have been produced by the said tolls shall be collected from tolls to be imposed on other articles."

The motion was supported by the mover and Messrs. Birdseye and Russell, and opposed by Mr. Briggs, and lost.

Mr. Nelson moved to strike out all that part of the section, from the word "state," in the eleventh line, to the word "aforesaid," in the forty-seventh line, including the tolls on the canal, the salt duties, the tax on steam-boat passengers, and the auction duties. He was opposed to interfering with the legislative pledge. It was a proper subject for them on which to exercise their discretion.

Mr. Birdseye supported the motion, which was opposed by Messrs. Fairlie, Briggs, and Van Vechten, when, on the suggestion of Mr. Young, the mover consented to postpone his amendment, to give place to a proposition of

Col. Young, who thereupon moved to strike out the same parts of the report as Mr. Nelson's motion contemplated, and to insert in lieu thereof the fol-

lowing: "that all pledges heretofore made, or which hereafter may be made, by the legislature to the public creditors, shall remain inviolate."

Mr. King objected to the proposition, on the ground that it did not reach the object in view, and would not secure the pledge to the state, since it referred only to the past, and not to the future.

Col. Young modified his proposition by inserting the words, "or hereafter to be made."

Chancellor Kent considered the amendment as the same in substance with the one that had been brought forward, when the subject was under discussion in the committee of the whole, by the gentleman from Erie, (Mr. Russell,) and overruled. The objection to it was, that it pledged the canal tolls and salt duties for the redemption of the canal debt already created, and to be created; but the rate of these tolls and duties was left to legislative discretion; and they might hereafter be reduced, so as to leave no proceeds to be applied to the debt, and only barely enough to support the current expenses of those establishments. This was not sufficient. Those rates and duties were now very low, and they ought to be pledged *as they now stand*, if we meant to make a sure and efficient pledge to the public creditors. The canal undertaking was an immense one, and would create, before it was completed, an enormous state debt, and it was essential to our credit, and prosperity, and character, that the debt should be funded on the most solid basis, and not left to the future pleasure of the legislature. This state has committed itself so far in the prosecution of the work, that it cannot recede, and must go forward and complete it; and unless we now permanently, by a constitutional provision, appropriate these funds to the redemption of the debt which was already created, and which should hereafter be incurred, it were deeply to be regretted that the subject was ever brought forward in the Convention. It was politic and honest to give such a satisfactory pledge of our public faith and ability. We should most materially wound our credit, and impair our ability to proceed, if we now withheld that assurance from the creditors. No fund could be more justly appropriated, since the debt arose out of the very subject of the canals, and the burden would operate equally and fairly upon every part of the state, since the tolls and duties would fall upon the consumers of the products conveyed to and fro upon the canals, and that consumption would generally be in a ratio to the population. The inhabitants of the east and of the south would buy their proportions of the salt and gypsum, and other productions transmitted through the canals, as well as the inhabitants of the western counties. He was for the report as it stood, and decidedly against the amendment.

The subject was further discussed by Messrs. King, E. Williams, Buel, Nelson, and Young; when, on motion of Mr. Nelson, the question on Mr. Young's amendment was taken by ayes and noes, and decided in the negative, as follows:

NOES.—Messrs. Baker, Barlow, Breese, Briggs, Buel, Burroughs, Child, D. Clark, R. Clarke, Clyde, Cramer, Dodge, Dubois, Duer, Dyckman, Edwards, Fairlie, Fish, Frost, Hallock, Hees, Hogeboom, Hunt, Hunter, Hunting, Jones, Kent, King, Lansing, Lawrence, Lefferts, A. Livingston, P. R. Livingston, Millikin, Moore, Paulding, Pitcher, Porter, Radcliff, Reeve, Rhinelander, Richards, Rockwell, Rogers, Rose, Sage, Sanders, R. Sandford, Seaman, Sharpe, I. Smith, Spencer, Stagg, Starkweather, I. Sutherland, Sylvester, Tallmadge, Ten Eyck, Townsend, Tripp, Tuttle, Van Buren, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, Wheeler, E. Williams, Woods, Woodward, Wooster.—76.

AYES.—Messrs. Beckwith, Birdseye, Brinkerhoff, Brooks, Carpenter, Case, Collins, Day, Eastwood, Fenton, Ferris, Howe, Humphrey, Huntington, Hurd, Knowles, M'Call, Nelson, Park, Pike, Price, Pumpelly, Rosebrugh, Ross, Russell, N. Sanford, Schenck, Seely, R. Smith, Steele, Swift, Taylor, Townley, Van Fleet, N. Williams, Yates, Young.—38.

Mr. Briggs renewed the motion to strike out the whole of that part of the section, which relates to canals.

Another debate ensued, in which the amendment was supported by Messrs. Briggs, Birdseye, and Swift, and opposed by Messrs. Van Buren, Sharpe, and Fairlie, when the question on Mr. Brigg's motion was taken by ayes and noes, and decided in the negative, as follows:

NOES.—Messrs. Baker, Barlow, Breese, Buel, Case, Child, D. Clark, R. Clarke, Clyde, Cramer, Dodge, Dubois, Duer, Dyckman, Edwards, Fairlie, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Hunt, Hunter, Hunting, Jones, Kent, King, Lansing, Lawrence, Lefferts, A. Livingston, P. R. Livingston, Millikin, Moore, Paulding, Pitcher, Porter, Radcliff, Reeve, Rhinelander, Richards, Rockwell, Rose, Sage, Sanders, N. Sanford, R. Sandford, Schenck, Seaman, Sharpe, I. Smith, Spencer, Stagg, Starkweather, Steele, I. Sutherland, Sylvester, Tallmadge, Ten Eyck, Townsend, Tripp, Tuttle, Van Buren, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, Wheeler, E. Williams, Woods, Woodward, Yates, Young.—80.

AYES.—Messrs. Beckwith, Birdseye, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Collins, Eastwood, Fenton, Ferris, Humphrey, Huntington, Hurd, Knowles, M'Call, Nelson, Pike, Price, Pumpelly, Rogers, Rosebrugh, Ross, Russell, Seely, R. Smith, Swift, Taylor, Townley, Van Fleet, Wooster.—31.

Mr. Burroughs moved the following proviso to the section:—"And provided also, that duties on salt shall not be increased."

Mr. Van Buren proposed to modify the proviso, by adding to it the words "unless by the consent of two-thirds of the legislature," to which Mr. Burroughs assented.

The motion was put, and lost; when the question on the whole section was taken, and carried.

The 11th section (prohibiting the legislature from hereafter authorising any lottery within this state) was read.

Chief Justice Spencer was of the opinion, that no constitutional provision or law on this subject would prevent men from dealing in lottery tickets, as long as it was allowed in other states; and if that must be the case, it would not be wise in us to shackle our legislature in such a manner, that no man can hereafter receive any benefits from that source, notwithstanding, we experience all the evils resulting from the sale of tickets from other states.

Should our legislature hereafter see fit to pass a law, that no foreign tickets shall be sold within this state, agents will be appointed to go to other states and purchase them; for the inducement is such, that they will not be restrained. This has probably been a consideration in our legislature heretofore, that they have not taken more rigorous measures to put a stop to this practice.

Mr. S. was not particularly solicitous on this subject, but would freely express his opinion as to the probable result of an attempt to do away the practice of dealing in lottery tickets. He would at all events leave it with the legislature to determine the proper course to be pursued on this subject; as it was not a fit subject for constitutional interposition.

Mr. Dodge. When the question, Mr. President, was under discussion in the committee of the whole, arguments were adduced, conclusive to my mind, that it was not only expedient and proper, but consistent with sound morality, to insert this article in the constitution. It was then admitted in every part of this house, that the principle by which lotteries were established and supported, was a gambling principle. I have heard nothing this day to alter my opinion, or weaken the impression that I then received, and have always entertained, against this system of raising a revenue.

The evil consequence of lotteries is more extensive than we can at first imagine. It tends to demoralize the state—it sets an example which is followed by every class of society—it loosens the moral obligations of society, and corrupts and adulterates the source—and the branches and streams which emanate from it become, of necessity, adulterated also. By establishing this principle as legal and constitutional, you afford an example more powerful to excite, than all your laws are to deter, from the commission of this species of crime.

But this is not all, sir; the effects of lotteries are to deprive the family of the poor man of the pittance which his daily labour afforded them. How many are there in society, who take all their little earnings, and exhaust the labours of a week, to purchase a quarter, or perhaps the whole of a lottery ticket, while their helpless wives and children are left to suffer for the want of the necessaries of life. Thus it is, that many of your citizens, when unsuccessful in their venture, are from necessity driven to stealing, or other unlawful practices to retrive their loss, or are thrown upon the town with their wives and children; and in my opinion, your state prisons have been filled as much from the effects of this pernicious practice of establishing state lotteries, as from any other.

But it is said, that the other states of the Union will continue to sell these tickets, and our citizens will purchase from them—grant it—the evil will in that case extend only to the rich—of them I have nothing to say, and for them nothing to ask. They, if they wished, could procure tickets from other states, or even from Europe, or from England; and if they lose their venture, their loss is not felt. But it is the poor man I wish to protect, whose wants and those of his family, require every shilling for the support of life, and whose cupidity is excited by the flattering prospect of enriching himself with the $30,000, or highest prize, without his understanding the chances which make it barely possible that he should gain.

But it is said that we cannot prevent the sale, and therefore it is argued that we should permit it. This is but a weak argument, and one which is not true. If lotteries cease to become constitutional, the legislature will prohibit the sale of tickets by a heavy penalty, and severely punish every one who vends them: this will, at all events, prevent their sale in every little village and town through the state, and will confine and limit their sale in the cities, if not totally prevent it.

Again: It is said that it may be wanted as a revenue, and that it operates as a tax on the vices of the community. But a tax on vices of this kind, operates as an encouragement to vice; and I appeal to the good sense of this Convention if that will not be the natural result of such a system.

It is said, by his honour the chancellor, that in Europe they have lotteries: and, for the first time in my life, do I now hear it doubted whether they are immoral or not. But in Europe, they also have their licensed gaming houses and brothels, and derive a revenue from them, and we certainly cannot approve such a system. The revenue which should arise from such a source, would be a curse rather than a blessing, and would arise, a very considerable part of it, from the poor and miserable.

But I have never yet heard of a writer, or read one, that did not consider it as immoral; and their only justification is, *necessity*.

Again: We are told that other states have not embraced this principle in their constitutions, and that the general government has authorized a lottery. This is no answer. We are now solemnly called upon in this Convention, representing this great and powerful state, to set an example to our sister states, worthy of their imitation; and all new states that may be hereafter erected will, I trust, consider this precedent (if we pass the section) as entitled to their most serious consideration.

Mr. Hogeboom concurred in opinion with the gentleman from Montgomery, (Mr. Dodge,) and expressed his hope that the members of the Convention were as moral now, as they were a few days ago, when the subject was agitated in the committee of the whole. Nor could he forbear to express his astonishment that the chief justice of the state (Mr. Spencer) had come forth on this occasion as the advocate of a system of public gambling. It was from the grave judges of the land, that the people of the state would naturally look for examples, and it was on that account to be peculiarly regretted.

Mr. H. entered into the subject at length, to show the pernicious effects of lotteries upon the public morals, and particularly upon the poorer class of the community.

Mr. Sharpe said that gentlemen were anxious to make it appear that lotteries in this state had been very profitable. He recollected the purchasing of a botanic garden by lottery, at an expense of 70 or 80,000 dollars, which was not

now worth more than a tenth part of the money. He should feel very much disheartened if he supposed the canal had got to be paid for by lotteries, as had been suggested by some gentlemen since this question had been under discussion. If this was the only means, it would never be paid for, without the money was drawn from the treasury of the state, as it had heretofore been, to meet the defalcations of lottery agents; and indeed he would rather see it taken from the treasury, than to see it drawn from the poorest and most miserable wretches in the community.

Mr. S. had no hesitation to say, that many families had been totally ruined by this very practice, and he did hope, that the good sense of the Convention would again determine to pass this section which had been passed in committee of the whole, and thereby put a stop to this disgraceful species of gambling.

Chancellor Kent regretted that the question on this subject had been renewed. He was no friend to lotteries in general, but he could not admit that they were *per se* criminal or immoral when authorized by law. If they were nuisances, it was in the manner in which they were managed. In England, if not in France also, there were lotteries annually instituted by government, and it was considered as a fair way to reach the pockets of misers, and persons disposed to dissipate their funds. The American congress, in 1776, instituted a national lottery, and perhaps no body of men ever surpassed them in intelligence and virtue. Lotteries had been authorized by congress under the present constitution of the United States, and very frequently by the legislature of this state. He was unwilling to say all these had been from the beginning immoral acts. It was a business that properly belonged to legislative discretion, and we did not come here to establish systems of ethics. There might be occasions in the future progress of society, in which a resort to lotteries to raise necessary funds might be expedient, and he doubted the policy of thus abridging the power of the legislature upon ethical theories.

Chief Justice Spencer could not have been hardy enough to offer this proposition if he had supposed it would draw down upon him such denunciations; but he thought that the clause as it stands, would look a little too much like a distrust in all future legislatures, and as if this Convention was the only wise and proper body, to determine all those matters which had heretofore been left to legislatures. It would be a little pharisaical, to suppose that we have more wisdom and virtue than all those who are to come after us.

Mr. S. thought that if this must be determined by the Convention, it was likewise important that provisions should be made to put a stop to all insurance establishments, as they were in their nature, a species of gambling as well as lotteries, and had been so considered by moral writers. The case of managers failing, had been exaggerated—there had not been so many instances as had been supposed. He again repeated, that it would be impossible to prevent the sale of tickets in this state.

With respect to the impropriety of taxing the vices of the people, as had been spoken of by the gentleman from Montgomery, (Mr. Dodge) that gentleman was a little mistaken, for it was a constant practice in our state. The tax gathered from all retailers of spirits was a tax upon the vices of the community; and he did not see that it could be any more improper in the one case, than in the other. He was far from being friendly to these lottery establishments, but as it was an evil that we could not get rid of, it would be as well to leave it to the discretion of future legislatures.

Mr. Cramer did not intend to enter largely into this debate: but it appeared a little singular to him, that gentlemen should be so very tenacious on this particular point, and pass over others of equal importance. If it was necessary to go into legislation on such minute points, why not insert a clause prohibiting horse-racing, and many other species of immorality? He was willing to go as far as any other gentleman in putting a stop to this practice, but he thought that leaving it with the legislature was as far as we could go with safety or propriety, unless we had a mind to say that the legislature shall not establish any more lotteries after those which are now in existence shall have expired, without it be by at least two-thirds of both branches.

It has been said, and truly said, that our lands and public property have been in a great measure squandered, and that we may hereafter be compelled to resort to direct taxation, unless we reserve to ourselves the privilege of lotteries; and as we must be satisfied that a stop cannot be put to it, we had better keep the profit resulting from that source in our own state.

Mr. C. did not consider this practice any more immoral than many others which were permitted and encouraged by our legislature. We had generally been in a habit of supposing that we have more wisdom and virtue than any other body of men, either before or after us, which was presuming too much.

Col. Young moved to amend the section by inserting a clause to prevent horse-racing. This motion was lost.

Col. Young concurred in opinion with the gentlemen from Albany (the chancellor and chief justice) on this subject, that it would be impossible to get rid of the evils attending this practice of gambling (as it had been styled) by lotteries. It had been stated that no revenue had ever been derived from this source. This was a mistake, for large sums of money had been raised to improve the navigation of the Hudson, and for the erection of colleges within this state. There had, to be sure, been some failures and defalcations, but nothing compared with the amount received by the state; and the legislature had learnt a lesson on this subject, which would enable them to avoid future losses in the same way. The state received, in one year, over and above all losses, more than thirty thousand dollars from this very source. We have now fixed upon us lotteries which will continue in operation for ten years to come; and are we to consider ourselves wiser and better than all that are to follow us, insomuch that we dare not trust our legislature in this respect? Have not the states of New-Jersey, Pennsylvania, Connecticut, and others, together with the general government, established lotteries; and do not all the governments on earth allow of lotteries? It would be going too far, to bind our legislature not to receive any revenue from this source, when it is known that revenues will be derived from it, and if it is not retained in this state, it must go to other states. He hoped that the section would be expunged, and that this subject might be left to the good sense and judgment of future legislatures.

Mr. Duer hoped that the clause would be retained. The honourable gentleman from Albany (Mr. Kent) had stated with great accuracy, the true nature of the question under discussion. He agreed with him in the opinion, that the Convention ought not to refuse absolutely to the legislature, the power of granting lotteries, if the exercise of that power under any circumstances, and for any purposes, could be wise and justifiable. He believed that such a case could never occur, and that the proposed limitation of the power of the legislature was therefore proper and necessary—proper, because the legislature ought not to possess a power which they ought not to exercise, and necessary because the experience of all nations had shewn, that the power, if given, would be abused. He had listened, with great surprise to the arguments that had been urged on this subject—a surprise much increased by the consideration, that they had proceeded from gentlemen whose eminent stations in society gave to their opinionsa peculiar authority. This was one of the subjects on which he had apprehended that little difference of sentiment could exist among well informed men. He supposed that it was an admitted truth, in political economy—a truth, in the present state of that science, almost regarded as elementary, that the plan of raising a revenue from lotteries, aught not to be adopted by a wise and moral government, since of all taxes, it was the most unjust and unequal in its mode of imposition and collection, and the most pernicious in its operation. He believed that the evils of lotteries were inseparable from the system, and not to be remedied by any regulations or restrictions that could be devised. The principal evil, was their tendency to promote and encourage a spirit of rash and wild speculation amongst the poor and labouring classes—to fill their minds with absurd and extravagant hopes, which diverted them from the regular pursuits of industry; and the continued indulgence of which was seen to be destructive to those principles and habits which it should be the object of every wise government to cultivate and preserve. To whatever sum the price of tickets might be raised, the sale of them in small shares,

could never be prevented, and the larger portions of the revenue derived from lotteries, would always be drawn from the pockets of the poor ; and that by a process which was certain to debauch the morals, and augment the poverty of those who were betrayed into vice, by legislative seduction. He hoped he might concur with other gentlemen, in seeking to prevent a practice productive of these consequences, without subjecting himself to the imputation of affecting an extraordinary purity, or leaning to a Pharisaical rigour of morals. But it was said, that we were showing ourselves utterly regardless of the experience of other nations. In the pride of superior wisdom, we were reprobating an usage sanctioned by all the civilized governments of Europe ; and the example of England and France was particularly insisted on, as of high aud overruling authority. This was an argument, the force of which he could not admit. He did not believe that the legislatures of Europe offered fit precedents for the imitation of a free people. If we yielded to such authority, it was difficult to say how far our deference should carry us. It was in utter defiance of such authority, that all our institutions had been framed ; and our republican form of government must be abandoned, if we meant to reconcile ourselves to the practice ; and shelter ourselves under the authority of the nations of Europe.

He would, however, observe, that in England public opinion on this subject had undergone, within a few years, a great and salutary change, and he sincerely believed would soon obtain a signal triumph over the erroneous practice of these governments. About three or four years past, a committee, composed of some of the most enlightened members of parliament, had been appointed to investigate the subject of lotteries. In their report, they gave it as their solemn opinion, that their annual lotteries were the sources of more vice, profligacy, and misery, particularly in the metropolis, than all other causes, operating injuriously on the morals of the people, connected and combined. They supported this opinion by an ample enumeration and detail of the abuses of the system. This developement produced a strong sensation in the public mind, almost equal in intensity, to that which had been produced many years before, by the first exposition in parliament, on the horrors of the slave trade.

At every session of parliament since that time, the passage of the lottery act had been strenuously opposed, and the minister had at last been reduced to place and defend the measure, upon the high ground of state necessity ; an argument which, owing to the peculiar situation of that country, had been hitherto found irresistible. That such a necessity could ever arise here, he did not apprehend : and he was willing to take from future legislatures the pretext of its existence.

Again—It was said that lotteries were a tax upon vice—that their profits were drawn from the dissipated and the idle—and that those who would otherwise be unproductive members of society, were thus made to contribute to the support of government. He considered this argument peculiarly unfortunate. It admitted the fact that the habit of gambling in lotteries, was, in itself, vicious ; and by a singular process of reasoning, made that fact the foundation of an argument for their support and maintenance. Mr. D. did not deny that there were cases in which taxes on vice were allowable and proper. But it was only, he humbly conceived, where the effect of the imposition is to restrain the practice of the vice on which it is laid. Such were taxes on spiritous liquors—the instance that had been chosen by the honourable gentleman on his left, (Mr. Spencer.) The use of spirituous liquors could never be prevented, and no government would attempt a total prohibition. But it was plain that taxes on their consumption, by enhancing their price, would in some measure be to restrain an abuse that can never be eradicated. But the effect of lotteries was directly the reverse. They acted not as a tax, but as a bounty on vice. Their effect was not to restrain or repress, but to stimulate and encourage. They extended and confirmed the pernicious habit of gambling, by offering new incentives and new facilities to its exercise and indulgence. Mr. D. then referred to the argument of the gentleman from Saratoga, as to the inefficacy of any prohibitory laws that this state could adopt. He admitted that the present laws, forbidding the sale of tickets in the lotteries of other states,

were constantly evaded, nor did he believe that such evasion could be prevented, so long as we continued to authorise lotteries ourselves. Those who were permitted publicly to sell the tickets of our state lotteries, would find no difficulty in secretly disposing of the tickets in foreign ones; but let the pernicious traffic be entirely condemned, and it would be much easier to enforce a total prohibition, than a partial restraint. Mr. D. did not believe that there would be any difficulty in framing and enforcing laws to protect the morals of our citizens against the invasion of foreign lotteries, when we should cease ourselves to derive a revenue from that polluted source. He did not mean to say that such laws would not be evaded to a certain extent, but if the partial evasion, or even frequent violation of laws for the prevention of crime, was considered as an argument against their enactment, the whole of our penal code ought to be abandoned or repealed, since to every law that it contained, the argument would apply with equal force.

But why, the question was constantly repeated, why not leave the subject to the discretion of the legislature? Because, he would reply, this was exactly one of the subjects on which the discretion of an ordinary legislature was not to be trusted. Legislatures were always under a strong temptation to resort to lotteries as a mode of raising revenue; and from a temptation to which it was more than probable they would yield, the constitution should preserve them. Lotteries, although taxes in effect, were not such in appearance and form, they were not so considered or felt by the people, or even by that portion of the community by whom they were paid; they were not considered as forming any addition to the public burthens, and could therefore be laid without any hazard to the popularity of those by whom they were imposed. Experience justified the assertion that this motive was too strong to be resisted by the virtue of any popular assembly; and the safest course to preserve their integrity was to remove the temptation.

Mr. Duer concluded with expressing his earnest hope that the clause would be adopted. Its adoption would reflect honour on the Convention—it would probably have the effect of awakening public attention to the subject, throughout the union, and would leave to New-York the glory of setting an example that other states would soon be proud to follow.

Mr. R. Clarke said he would not at this time have troubled the Convention with any remarks on the subject, had it not been for the unexpected and powerful support which the lottery system had acquired.

A lottery (said Mr. C.) in ancient times was considered a most solemn, serious institution, and according to ancient history, both sacred and profane, was never resorted to only as a solemn appeal to the final decision of the Supreme Being, in some important controversy, the correct decision of which was beyond the power and comprehension of any earthly tribunal: in confirmation of which, the sacred volume declares, that " the lot is cast into the lap, and the whole disposal thereof is of the Lord." But the depravity of man, in after ages, has perverted this sacred institution to the most pernicious purposes. Lotteries, in form of games of chance, were introduced; but it remained for the politicians of modern times to give the finishing touch to the prostitution of this most solemn institution, by passing laws declaring in effect that this kind of gambling was lawful and expedient, provided the government was a party; and the ingenuity of your legislature has from time to time been put to the rack to devise schemes, to entrap and deceive a credulous community. Your state has gone farther, and enacted that they will monopolize this species of gambling. Their zeal in this respect was worthy of a better cause. They have declared all private lotteries criminal and punishable by fine and imprisonment, and have made it imperative on your judges to charge every of your grand juries to enquire into all offences committed against that act.

But the strong argument urged in favour of this demoralizing practice is, " that we cannot prevent our sister states from selling lottery tickets to our citizens, and that seeing we cannot prevent the evil, we ought to avail ourselves of it as a source of revenue, for," says the gentleman from Albany, (Mr. Kent,) " this is the only way we can get at the wealth of the purse-proud miser." Sir, let the rich miser, or the rich prodigal, go or send abroad for lottery tickets,

It is not those classes of men whom I wish to protect, but it is the poor, the inexperienced, the unwary, and if you please, the imprudent, to ensnare whom your tickets are divided and subdivided into halves, quarters, and so on, and in this shape brought to their very doors by lottery speculators, who in this manner wring from them their last pittance, and as it were compel them to enter the unequal lists of gambling with the state. Sir, I hope the great state of New-York is not, nor never will be, reduced to so degraded a condition as to license and encourage a known and acknowledged vice among her citizens, in order to obtain therefrom a pitiful revenue.

The motion for striking out was further supported by Messrs. Birdseye and Tallmadge, and opposed by Messrs. Edwards, Van Buren, and Buel, when

The Chief Justice withdrew his motion to strike out, for the purpose of having the final question on the section taken. The question was then taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Baker, Beckwith, Briggs, Brooks, Buel, Burroughs, Carpenter, Case, Child, R. Clarke, Clyde, Dodge, Dubois, Duer, Edwards, Fenton, Ferris, Fish, Frost, Hogeboom, Humphrey, Hunter, Huntington, Hurd, King, Lansing, Lawrence, A. Livingston, M'Call, Millikin, Moore, Munro, Park, Paulding, Pitcher, Porter, Radcliff, Reeve, Rhinelander, Rogers, Ross, Russell, Sage, N. Sanford, Schenck, Seely, Sharpe, R. Smith, Stagg, Starkweather, I. Sutherland, Sylvester, Townley, Townsend, Tripp, Van Buren, Van Ness, S. Van Rensselaer, Van Vechten, Verbryck, Wendover, Wheaton, N. Williams, Wooster—67.

NOES.—Messrs. Barlow, Birdseye, Breese, Brinkerhoff, Carver, D. Clark, Collins, Cramer, Dyckman, Eastwood, Fairlie, Hallock, Howe, Hunt, Hunting, Jones, Kent, Knowles, Lefferts, P. R. Livingston, Nelson, Pike, Price, Pumpelly, Richards, Rockwell, Rose, R. Sandford, Seaman, Sheldon, I. Smith, Spencer, Steele, Swift, Tallmadge, Taylor, Ten Eyck, Tuttle, Van Fleet, Ward, E. Webster, Wheeler, E. Williams, Woods, Woodward, Yates, Young.—45.

The 12th section, abolishing the 30th article of the constitution of this state, (relative to appointing delegates to the general congress) was read.

Mr. Wheaton moved to strike out this section. He did not perceive the necessity of it. The article in question provided for the appointment of delegates to the old continental congress. When this state adopted the federal constitution, the article was impliedly repealed. It had therefore become obsolete. There was precisely the same necessity of submitting to the people a distinct proposition for abolishing the court of admiralty, recognized in the constitution of 1777, and in active existence in this state until the adoption of the national constitution, by which we ceded to the Union all admiralty and maritime jurisdiction. Unless, therefore, it was the intention of the Convention to establish an entire new constitutional code, which he hoped would not be the case, this harmless article might be suffered to remain as an historical monument. If the amendment were to be submitted separately to the people, their attention would be distracted by being called on to consider so many complicated propositions, some of which it was perfectly immaterial whether they ratified or not.

The motion was supported by Messrs. Kent, Fairlie, and King, and opposed by Mr. Van Buren, when the question was put and lost, and the section passed without amendment.

The 13th section, expunging the 40th article of the present constitution, which relates to military duty and conscientious scruples against bearing arms, was read.

Chancellor Kent presented the following memorial from the Society of Friends.

To the Convention of Delegates elected to revise the Constitution of the State of New-York.

The memorial of the representatives of the Society of Friends in the state of New-York, respectfully sheweth—

That having observed in the recent proceedings of the Convention, that a proposition has been introduced, requiring all persons who, from scruples of con-

science, are averse to bearing arms, to pay an equivalent in money, to be estimated according to the expense in time, money, and equipment of an ordinary able bodied militia man; and as such a measure would, if enforced, be a grievous burden upon the society of friends, your memorialists consider it to be their duty, in behalf of the society, respectfully to invite your attention to the subject.

Since the existence of the society, it has always maintained the doctrine, that war, in all its forms, whether offensive or defensive, is entirely at variance with the precepts and examples of Jesus Christ; and in consonance with this belief, they have uniformly declined to comply with all military requisitions.

We are aware, however, that it is considered by many, that although friends cannot, in conformity with their profession, bear arms, yet that they might and would pay a fine or tax as an equivalent, especially if its amount was applied to purposes, to which, in ordinary cases, they would be willing to contribute. But it must on reflection be evident, that as the original requisition is repugnant to their sentiments, they could not concientiously agree to any substitute for it, nor make any commutation for an act which they believe to be forbidden by their religious principles. And they apprehend that any application of the moneys, however benevolent in its nature, would not lessen the force of their objections, as it cannot be supposed that a change in the appropriation of a tax can alter the principle upon which it is levied.

The obligation which they feel themselves under, not to comply with any military requisitions, nor to pay any equivalent, is founded, they conceive, not only on the doctrines of the Christian religion, but derived from the undeniable dictates and the unalienable rights of conscience, which can neither be communicated nor controlled by human authority; but which belongs essentially to the relation existing between man and his Creator: And the free exercise of conscience, when it cannot be alledged that it tends to acts of licentiousness, or to the injury of others, is believed to be in accordance with the liberal views of the age in which we live, the republican institutions of the United States, and the spirit of the present constitution of this state.

Such an evidence of national liberality, of public regard to private and individual feeling, as is now sought for, will not be peculiar to the council of this state, as it is understood that under several of the state governments, the society of friends, on account of their conscientious scruples, are entirely and unconditionally exempt from all military requisition.

Your memorialists can have no doubt, that on a deliberate examination of the provision proposed to be introduced into the constitution, it will be seen that whilst it appears to have been designed to give some relief to those who are conscientiously scrupulous in this respect, it results in reducing that relief to the price of a substitute; which, as respects the society of friends, is placing it on a footing with which they can no more comply, than they can bear arms. We therefore consider that it is not asking too much of the convention to request it to pause and deliberate, before a proposition is adopted which cannot be repealed from year to year, when its oppressive consequences are experienced—consequences which will be severely felt by the members of this society, exposed, as they must be, to the exactions of collectors, who in taking their property by distraint, often make the seizure to an extent entirely disproportionate to the sum demanded.

Your memorialists respectfully yet earnestly solicit, in behalf of the members of the society of this state, that the subject may again receive your serious deliberation, and that the constitution may be so modified, as that the religious society of friends called Quakers, may not only be exempt from bearing arms, but from incurring any fine or penalty in lieu thereof.

Signed by direction, and in behalf of a meeting of the representatives aforesaid, held in the city of New-York, the 27th of the 10th Month, 1821.

SAMUEL PARSONS, Clerk.

Chancellor Kent moved the following amendment:

After the word, "*paying*," strike out the remainder of the section, and insert the following: "Such fines or penalties as the legislature may impose, not exceeding in amount the expense in time, money, and equipments, of an ordinary able-bodied militia man."

Col. Young moved, that the further consideration of this section be postponed till to-morrow. Carried.

The 11th section, relative to the support of public worship, was read.

GEN. TALLMADGE moved to strike out the section, and insert the following words, from the 38th article of our present constitution:

"This Convention doth further, in the name and by the authority of the good people of this state, ordain, determine, and declare, that the free exercise and enjoyment of religious profession, and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind: Provided, that the liberty of conscience hereby granted shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state."

CHIEF JUSTICE SPENCER was in favour of retaining the section; but of striking out the following words: "No particular religion shall ever be declared or adjudged to be the law of the land."

THE CHIEF JUSTICE was opposed to this provision in the constitution, as it would go to prevent punishment for blasphemy, and thereby endanger the morals of the community. He understood that when the proposition was first introduced, it was that no religion should ever be declared the law of the land: but it was afterwards modified by adding the word *particular* religion. By *particular* religion, he understood that it was the Christian religion, distinct from Judaism, Mahometanism, &c. without regard to any particular sect of the Christian religion. Are we prepared to send forth to the people a provision in our constitution, that shall suffer any man to blaspheme, in the most malicious manner, his God, and the religion of the Redeemer of the world? Our laws give sufficient latitude on this subject. Those christians, who believe that the seventh day is the Sabbath, are tolerated. You permit them to work on the Sabbath; but we do endeavour to prevent men from reviling the Saviour of mankind, and from reviling the religion which the great mass of the community have adopted. If this provision be sanctioned, it will put it out of the power of any court to punish for the most infamous blasphemy.

MR. WHEATON wished Mr. Tallmadge would modify his motion for striking out the whole section, so as to confine it to Mr. Spencer's proposition to strike out the last clause.

MR. BRIGGS hoped the whole section as reported would be adopted. He had yet to learn, that a person had not the right to discuss the question of the truth of the Christian religion.

MR. VAN BUREN was in favour of striking out the section, and adopting the article in the present constitution. He dissented from the gentleman from Albany, (Mr. Spencer,) that the Christian religion was a part of the law of the land; and it was not for the arguments advanced by him, that he was in favour of striking out the section.

MR. KING. With doubts on the subject, which I desire rightly to understand, I hesitate in agreeing to the legal doctrine now recommended to our acceptance, and which seems to deny to the Christian religion the acknowledgment, protection, and authority, to which I have believed it to be by law entitled.

We are urged to amend the constitution, by adding an article thereto, "that no *particular religion* shall ever be declared, or adjudged to be the law of the land." We all know that the constitution of the state provides, "that such parts of the common and statute law of England, and of the acts of the colony of New-York, as together formed the law of the colony on the 19th of April, 1775, shall continue to be the law of the state, subject to such alterations as the legislature shall make concerning the same: and that all such parts of the common and statute law, and of the acts of the colony, as may be construed to establish or maintain any particular denomination of Christians, or their ministers, were, and are, abrogated and rejected."

It is not stated that the legislature have made any alterations in this law; and it is only necessary to ascertain its just interpretations, in order to determine how far the Christian religion may be declared and adjudged to be recognized as a portion of the law of the land.

The laws of every nation in Christendom have for ages acknowledged and protected the Christian religion—and in virtue of the laws and statutes of Eng-

land, the Christian religion, for many centuries, has been acknowledged and established in that nation.

While the Christian religion, by force of the common and statute laws of England, and the acts of the colony of New-York, was fully acknowledged, and as respected the Episcopalians, was even established in the colony, the constitution provides that all such parts of these laws, as might be construed to establish or maintain any particular denomination of Christians, or their ministers, should be abrogated and rejected.

The object of this provision was to abolish the discrimination, by which the Episcopalians were alone deemed to be established in the colony, and thereby to place every denomination of Christians on the same, and upon an equal footing. Another clause of the constitution, to guard against spiritual oppression and intolerance, ordains that the free exercise and enjoyment of religious profession and worship, shall for ever *be allowed* within this state to all mankind. The fair import of the several provisions, taken in connection with each other, must be, that the laws of the state do so far recognize and establish the Christian religion, (comprehending all denominations of Christians, without distinction or preference,) as portion of the law of the land, that defamatory, scandalous, or blasphemous attacks upon the same, may and should be restrained and punished.

While all mankind are by our constitution tolerated, and free to enjoy religious profession and worship within this state, yet the religious professions of the Pagan, the Mahomedan, and the Christian, are not, in the eye of the law, of equal truth and excellence.

According to the Christian system, men pass into a future state of existence, when the deeds of their life become the subject of rewards or punishment—the moral law rests upon the truth of this doctrine, without which it has no sufficient sanction. Our laws constantly refer to this revelation, and by the oath which they prescribe, we appeal to the Supreme Being, so to deal with us hereafter, as we observe the obligation of our oaths.

The Pagan world were, and are, without the mighty influence of this principle, which is proclaimed in the Christian system—their morals were destitute of its powerful sanction, while their oaths neither awakened the hopes, nor the fears which a belief in Christianity inspires.

While the constitution tolerates the religious professions and worship of all men, it does more in behalf of the religion of the gospel—and by acknowledging, and in a certain sense, incorporating its truths into the laws of the land, we are restrained from adopting the proposed amendment, whereby the Christian religion may lose that security which every other Christian nation is anxious to afford to it.

The provisions of the constitution, having served to preserve the purity of the religion which is professed by our fellow citizens, and not having in any case proved intolerant to those who have dissented from their worship; is it not a matter of prudence, as well as duty, that we leave this part of the constitution unaltered?

Col. Young replied to the remarks of the gentleman from Queens, (Mr. King,) and was unable to see the force of his arguments. Jews, Mahomedans, and persons of all religions, were recognized as competent witnesses in courts of law. He related an instance where a Hindoo was admitted to swear in an English court.

Chancellor Kent said, that the gentleman from Otsego, (Mr. Van Buren,) had given what he thought the just exposition of the case of the *People* vs. *Ruggles*, in VIIIth Johnson's Reports. He never intended to declare Christianity the legal religion of the state, because that would be considering Christianity as the established religion, and make it a civil or political institution. The constitution had declared that there was to be "no discrimination or preference in religious profession or worship." But Christianity was, *in fact*, the religion of the people of this state, and that fact was the principle of the decision. The Christian religion was the foundation of all belief and expectation of a future state, and the source and security of moral obligation. To blaspheme the author of that religion, and to defame it with wantonness and malice, was an offence against public morals, and injured the social ties and the moral sense of

the country; and in that view the offence was punishable. The legislature had repeatedly recognized the Christian religion, not as the religion of the country established by law, but as being in truth the actual religion of the people of this state. The statute directing the administration of an oath, referred to the Bible as a sanction to it, and on the ground that the Bible was a volume of divine inspiration, and the oracle of the most affecting truths that could command the assent, or awaken the fears, or exercise the hopes, of mankind. So the act for the religious observance of the Lord's day, equally recognized the universal belief in Christianity, and the moral obligation and eminent utility of its precepts. In this sense, we may consider the duties and injunctions of the Christian religion as interwoven with the law of the land, and as part and parcel of the common law; and maliciously to revile it, is a public grievance, and as much so as any other public outrage upon common decency and decorum. The present constitution had gone quite far enough with the freedom of toleration of religious opinion. We had better leave it as it is, without any new provision on the subject, and especially any that might be construed to allow of still increasing latitude of discourse and action. We cannot now, without a statute provision, punish any attacks, by words or actions, or writings or prints, upon Christianity, any further than they may be considered as offences *contra bonus mores*, and breaches of those public morals, and of that universal sense of fitness and duty, which rest as their basis on the belief of the Bible.

Before the question was taken on the section, the Convention, on motion of Mr. Briggs, adjourned.

WEDNESDAY, OCTOBER 31, 1821.

The Convention assembled as usual, and the President having taken the chair, the journal of yesterday was read and approved.

THE LEGISLATIVE DEPARTMENT.

The fourteenth section of the report of the committee of the whole, on the legislative department, (relative to religious liberty, and the maintenance of ministers of the Gospel,) being under consideration, Mr. Spencer moved, that when the question shall be taken, it be taken by ayes and noes.

In calling for the ayes and noes, Mr. S. entered into a full discussion of the question, whether the Christian religion is a part of the law of the land, and declared it to be his decided and deliberate opinion that it was. In support of his views, he adduced several decisions in courts of justice, where the principle he contended for was recognized. He dissented from his honourable colleague (Mr. Kent) that decisions in cases of blasphemy are placed upon the ground that such offences are only against good morals.

Mr. Birdseye made a few remarks, in which he disagreed with the gentleman from Albany (Mr. Spencer) with regard to the pernicious tendency of the latter clause of this section.

Chancellor Kent dissented from the opinion expressed both by the gentleman from Queens (Mr. King) in the debate of yesterday, and by his honourable colleague (Mr. Spencer) who had just spoken. He believed they were partly in an error on this subject. In one sense the Christian religion was a part of the law of the land—it was so interwoven with our institutions, sentiments, and feelings, that it was in effect, recognized as a part of the law of the land. But it formed no part of our political institutions; and the Bible itself had never been established, as constituting a portion of our laws. Blasphemy was punished as an offence *contra bonos mores*. This would be evident from the consideration, that a person could not be arraigned for expressing the most sceptical opinions, provided it was done in a decent manner. The gentleman in his rear (Mr. Briggs) undoubtedly had the right he contended for, to discuss any religious subject with freedom, if in so doing, he did not offend good morals.

The question on striking out was then taken by ayes and noes, and decided in the affirmative as follows:

AYES—Messrs. Raker, Barlow, Beckwith, Breese, Brinkerhoff, Buel, Burroughs, Child, Clyde, Collins, Cramer, Dodge, Dubois, Duer, Dyckman, Edwards, Fairlie, Fish, Frost, Hallock, Hees, Hunter, Hunting, Huntington, Hurd, Jones, Kent, King, Lansing, Lawrence, Lefferts, A. Livingston, M'Call, Millikin, Moore, Munro, Nelson, Paulding, Pitcher, Porter, Pumpelly, Reeve, Rhinelander, Rockwell, Rogers, Rose, Rosebrugh, Russell, Sage, Sanders, N. Sanford, Sharpe, Sheldon, I. Smith, R. Smith, Spencer, Stagg, Sylvester, Tallmadge, Ten Eyck, Townley, Van Buren, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Verbryck, Ward, E. Webster, Wendover, Wheaton, E. Williams, N. Williams, Woodward, Yates—74.

NOES—Messrs. Bacon, Birdseye, Briggs, Brooks, Carpenter, Carver, Case, D. Clark, R. Clarke, Eastwood, Fenton, Ferris, Hogeboom, Howe, Humphrey, Hunt, Knowles, P. R. Livingston, Park, Pike, Price, Radcliff, Richards, Root, Ross, R. Sandford, Schenck, Seaman, Seely, Steele, Swift, Taylor, Townsend, Tripp, Tuttle, Van Fleet, Van Horne, Wheeler, Woods, Wooster, Young—41.

The thirteenth section (relative to bearing arms and conscientious scruples) which was yesterday postponed, was read.

Previously to entering upon this section, the President stated that the resolution relative to apportioning the members of assembly, yesterday offered by Mr. Wheaton, and ordered to lie on the table, had not been acted on.

Judge Van Ness called for an explanation of the nature and object of the resolution.

Mr. King explained, and expressed an opinion that it was necessary to make this apportionment before the new constitution shall go into operation.

Mr. Van Buren thought it would be much better to leave this subject to the legislature. The only inconvenience would be, that the first legislature under the amended constitution would be elected according to the present apportionment.

Mr. E. Williams remarked, that if this course were adopted, the western part of the state would be deprived of fourteen members, to which it was now entitled, in making the apportionment.

A few remarks were made by Messrs. Ward and Wheaton, when the question on the resolution was taken, and lost.

The question on the 13th section of the report under revision, relative to the imposition of military service, or an equivalent therefor, upon persons, professing to have religious scruples against bearing arms, was then resumed.

Gen. Root remarked that he had not been benefitted by the debate on this subject, (having been absent,) nor could he enter on the subject with a great degree of confidence, since the object was to establish a hierarchy in this state. The object of the proposition before the house, was, as he understood it, to free all the conscientiously scrupulous from the performance of military duty, on the payment of an equivalent for it. Suppose we should get this hierarchy established, and agree to free all the conscientiously scrupulous, will not the legislature hereafter have to act their part on the subject, in order to favour all those who may claim to be conscientiously scrupulous? We are about to exchange a military force for a hierarchy—This will prepare our country for future defence against an invading enemy. We have now hypocrites enough among us: and let this provision be adopted, and we shall make more of them, by inviting men to come forward and say that they are conscientiously scrupulous about bearing arms. What will be the consequence of this? Instead of being able to send out an army of militia, we shall have to send a band of crusaders to meet the enemy.—These conscientiously scrupulous, after being exempted from military duty, will be ready to engage in crusading. If this Convention, who have assembled for the purpose of amending our constitution, continue to go on in this way, where will you find a man, whose bosom burns with a love of country, that will vote for the constitution when we present it? Not a man that will surrender his liberty upon the altar of canting hypocrisy. We have had sufficient evidence of the effect produced by this exemption, from the experience of the last twenty-six years, during which Mr. R. had been an inhabitant of this state. Previously to every governor's election, there has been

a Quaker petition before the legislature; and when the struggle has been arduous, they have always turned out to the polls, and the party who was willing to give the highest price, has always secured their votes; but those who have undertaken to purchase them with a price, have generally lost their supposed equivalent. An evidence of this was exhibited at the last governor's election. A bill was ushered into the house by a particular party to exclude the quakers from military service, and also from paying an equivalent therefor. At that time the dominant party in the assembly was of different politics from the dominant party in the senate. The bill was carried through the assembly, and when the engrossed bill was going from the lower house to the senate, a change of sentiment was immediately wrought in these conscientiously scrupulous, and a pledge was given to support the other candidates, if the bill could be carried through that house also. The time of their conversion from one side to the other could be precisely ascertained, if you could know at what time the clerk of the senate was on yonder Mosaic pavement, with the engrossed bill under his arm.

If this plan be adopted, the legislature will hereafter be engaged in shuffling the quaker question and the conscientiously scrupulous question, previously to a governor's election, as they have heretofore done.

Mr. R. said he had hoped, that something would be done by this Convention to put a stop to this system of electioneering; that when a farmer returned home from Albany, and was asked by his neighbours, what the legislature were doing, he need not be under the necessity of saying that they were electioneering. He hoped that the constitution would be so amended, as to redeem the state from these imputations so justly bestowed.

The patriots of the revolution, in forming our present constitution, exempted quakers from military service, provided they would pay an equivalent; but our legislature have passed laws from time to time, till they at length came to the conclusion that their services were good for nothing, and that nothing would be an ample equivalent. This law passed both branches of the legislature, and went through the council of revision, constituted in part of the wisest and greatest jurists in our state, without a word of objection, notwithstanding it was in the face and eyes of our constitution. Now, if these wise men, who were set as a guard to prevent the legislature from encroaching upon the rights of the people, could not prevent this violation of the constitution—how are we to expect our governor, who has now the only veto upon laws, to withstand these quakers, and be conscientiously scrupulous?

Mr. R. had hoped that a remnant of the old constitution would be preserved from the ruthless hand of power and ambition—that the force of political and religious hypocrisy would not have swallowed up the last remnant of liberty and equality in this community; but the present plan was calculated to increase hypocrisy, and the legislature would be obliged to gratify it, or lose a great number of votes at every warmly contested election.

Chief Justice Spencer remarked, that the amendment offered by his honourable colleague (the chancellor) had for its object to fix a maximum, beyond which the legislature should never go, in imposing fines upon those who have conscientious scruples against bearing arms—that it shall never exceed the value of services of an able bodied militiaman.

The gentleman from Delaware had endeavoured to enforce the idea, that these Quakers, who are considered as having scruples as to bearing arms, are a set of the most vile hypocrites. He did believe that if there was ever a set of men seriously and conscientiously scrupulous against bearing arms, it was this sect of christians called Quakers. We owe to this class of men the first step which was taken towards the abolition of slavery in this country, and as far as we are acquainted with their opinions on this subject, we have reason to think them very sincere. They abstain from the use of sugar and molasses, and all other articles which are produced by the means of slavery. [Here Mr. S. was called to order by the President, as being off of the subject under consideration.]

Mr. S. thought the gentleman from Delaware (Mr. Root) had gone so far in slandering these Quakers, that it was his duty to offer his opinion on the subject; and he hoped it would not be considered out of order.

The manner in which fines had been heretofore collected from these people, was well understood, and it was a fact that property had been sacrificed by them to a very considerable amount; and there was no way of collecting them but by distress. These men are also abridged in the right of suffrage; by neglecting to do military duty, many of them will lose the privilege of voting; and there is not the least probability that men will turn Quakers merely to get clear of military duty. This was a subject which might be safely left to the legislature to determine; and it would certainly be much more appropriate for that body to decide the question, than for this Convention, under existing circumstances, to do it. Should this proposition contained in the report as it now stands, be sanctioned by the Convention, it would certainly appear as if the disposition of the majority to oppress the minority was so great, that we were afraid to trust our legislature to the management of our own affairs.

Mr. R. Clarke was opposed to the amendment. No person would more reluctantly infringe the rights of conscience than himself; but he could not believe, that any part of the community who shared equally in the benefits of the government, could be equitably exempted from contributing, either in military services, or in money, to its support, and to the protection of the country. The sect called Quakers, in many cases, did not scruple to avail themselves of the profits growing out of military operations. The precepts of Christianity, by which this sect professed to be governed, required us to render unto Cæsar the things which are Cæsar's.

Mr. Dodge asked the honourable gentleman from Delaware whether the correct construction of the word, "equipments," would not compel the Quakers, and others who have scruples of conscience, to pay the amount of a "musket and equipments" every year. The answer the gentleman had given, that they should pay for the musket the first year, and the interest of it afterwards, involved the absurdity that the constitution we should make would have a different construction one year from what it did another. The connection between the words *time*, *money*, and *equipments* made this construction the true one; and he had no doubt that the legislature would give it that construction. He agreed with the gentleman from Delaware, on his right (Mr. Clarke,) that they should pay some commutation; but it should not exceed at least, that of other citizens.

Mr. E. Williams followed in the debate, and spoke at considerable length in defence of the society of Friends, and against the section as it now stands. It was in violation of some of the plainest principles of our government, which recognized the rights of conscience and scruples against bearing arms. If scruples of conscience are ever acknowledged to be sincere, why should they now be violated, and a whole religious sect be arraigned for hypocrisy? Were they not as likely to be as honest and sincere in their professions, as any other class of Christians; and should we act upon the supposition that all religious professions were hypocritical and false?

Chancellor Kent withdrew his amendment; and a motion was made to strike out the words "and equipments," near the close of the section, and insert the word "and" between "time" and "money," so as to read "an equivalent to be estimated according to the expense in time and money."

Another debate ensued, in which Messrs. Sharpe and Briggs participated; the former against exempting Quakers from military duty, or an equitable equivalent in money, and the latter in vindication of the rights and liberties of conscience, when the motion on striking out and inserting, was put and carried.

Chief Justice Spencer moved to strike out the words "and money."

The motion was opposed at some length by Mr. Root, when the question was taken and lost.

Chancellor Kent then moved to strike out all that part of the section after the word money, embracing the following clause—"The legislature shall provide by law for the collection of such an equivalent, to be estimated according to the expense, in time and money, of an ordinary able-bodied militia-man."

Col. Young thought it was going too far, to strike out this part of the section, and thereby exempt from military duty, not only the Quakers who were exempted by the old constitution, but all others who may rise up and say that they have scruples of conscience to bearing arms; and not even demand an equivalent in money. If the statement of the gentleman from Delaware is correct, there are many who do come forward with this pretence, for no other purpose than

to be excused from military duty. Mr. Y. said he had as much sympathy for Quakers as any body, but he believed that that sympathy had been wrought up to such a pitch in their favour, that we were going farther than the nature of the case would admit. The sum which they were called on to pay annually, was trifling. It never had exceeded four dollars, and as to their sacrificing so much by having property sold, he believed that was a mistake; it was generally bid off by a friend, who afterwards was willing to restore it and to receive back his money. He was anxious that the constitution should be so organized as to operate equally on all classes; the present plan would render the militia system very unequal, unless those who are exempted from personal service can be compelled to pay an equivalent. Is it not as hard to call on other young men, when they come of proper age to enter the ranks, and demand that they equip themselves and appear upon the parade; and if they do not comply with the command, fine them, and if they are not able to pay a fine, imprison them? We are told that these men are excluded from the right of suffrage. Who does it? They do it themselves, by not complying with the requisitions of the law, as other citizens do. Mr. Y. was perfectly willing to excuse them from bearing arms, but must insist that they pay an equivalent, and no more. In the time of war, they are excused from going to the field of battle; whilst others are compelled to turn out, and risk their lives to protect them and their families at home—and will they not pay an equivalent for this, to enable us to protect their own fire-sides? By this proposition, not only Quakers are to be exempted, but a hundred other sects may spring up, and with the same propriety claim an exemption.

After a few remarks from Mr. Briggs, the question on striking out was taken by ayes and noes, and decided in the negative, as follows:

NOES.—Messrs. Bacon, Barlow, Beckwith, Birdseye. Brinkerhoff, Burroughs, Carpenter, Case, Child, D. Clark, R. Clarke, Clyde, Cramer, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Ferris, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Hurd, King, Lansing, Lawrence, Lefferts, P. R. Livingston, M'Call, Millikin, Moore, Munro, Nelson, Park, Paulding, Pike, Porter, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Root, Rose, Rosebrugh, Ross, Russell, Sage, Sanders, N. Sanford, R. Sandford, Schenck, Seely, Sharpe, Sheldon, R. Smith, Stagg, Starkweather, Steele, I. Sutherland, Swift, Sylvester, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Fleet, Van Horne, Van Vechten, Verbryck, E. Webster, Wendover, Wheaton, Wheeler, Woods, Woodward, Wooster, Young.—88.

AYES—Messrs. Baker, Briggs, Carver, Collins, Dodge, Fish, Frost, Huntington, Jones, Kent, Pitcher, Rhinelander, Rogers, Seaman, I. Smith, Spencer, Van Buren, J. R. Van Rensselaer, S. Van Rensselaer, E. Williams, N. Williams, Yates—23.

The section then passed as amended.

Mr. Birdseye offered the following substitute to the fifteenth section, which was stricken out this morning:

"Entails shall never be revived in this state; no rights of primogeniture shall be established by law, other than what may consist with the existing statute of descents; no privileged orders shall exist; and no class of men shall ever be subjected to any peculiar disability on account of their religion, profession, or employment."

Mr. B. went into a full explanation and defence of the principles contained in his proposition. He alluded to the provisions in the constitutions of other states, disqualifying and disfranchising a part of the community, in consequence of their religious belief, professions, &c. and hoped our constitution would avoid all disabilities of this kind.

Messrs. Van Vechten and Spencer opposed the substitute, as containing provisions wholly unnecessary. On the subject of permitting clergymen to hold civil offices, they both concurred in believing it was incompatible with their ecclesiastical functions.

Mr. Birdseye made a few remarks in reply, when the question on the substitute was taken and lost.

Mr. Yates then moved to abolish the thirty-ninth article of the present constitution, prohibiting clergymen from holding military or civil offices, and assigned his reasons for the motion.

Some discussion took place between Messrs. Young and Birdseye, in which the opinion of President Nott was alluded to, when the question was taken by ayes and noes, and decided in the negative by all the members present, excepting Messrs. Birdseye, Briggs, Burroughs, Kent, Pitcher, Russell, R. Sandford, Van Ness, Ward, and Yates, who voted in the affirmative.

The fifteenth section, (relative to writs of habeas corpus,) passed without amendment.

The sixteenth section, (relative to the privileges of trial by jury,) was read.

The Chief Justice moved to strike out the words "assault and battery and breaches of the peace." Carried.

Mr. Birdseye moved to strike out all that part of the section down to the word "jury," which not being seconded, the question was taken on the whole section, as amended, and carried.

The eighteenth section, (relative to criminal prosecutions,) was stricken out, as being unnecessary.

The seventeenth section, (relative to the liberties of speech and of the press, and to prosecutions for libels,) was read.

Chief Justice Spencer made a few remarks on the section, in which he alluded to sentiments attributed to him in his absence, which he took this opportunity to disclaim. He felt it his duty to make this explanation of his motives.

Mr. Duer replied, and moved to strike out the words "or indictments," and to insert the words "civil or criminal," before the word "prosecutions," so as to permit the truth to be given in evidence, both in civil and criminal prosecutions.

Some discussion took place between Messrs. Spencer and Duer, in which the former opposed, and the latter supported the amendment, when Mr. D. withdrew his motion, and the question was taken on the first part of the section down to the word "press," and was carried.

On the remainder of the section, (relative to prosecutions for libels,) Mr. Van Buren called for the ayes and noes, which were then taken, and the question decided in the affirmative, as follows:

AYES—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Breese, Briggs, Brinkerhoff, Brooks, Buel, Burroughs, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Day, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Ferris, Fish, Frost, Hallock, Hees, Hogeboom, Howe, Humphrey, Hunt, Hunting, Huntington, Hurd, Jones, King, Knowles, Lansing, Lawrence, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Munro, Nelson, Park, Paulding, Pike, Pitcher, Porter, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Rogers, Root, Rose, Rosebrugh, Ross, Russell, Sage, Sanders, N. Sanford, R. Sandford, Schenck, Seaman, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Stagg, Starkweather, Steele, D. Southerland, I. Sutherland, Swift, Tallmadge, Taylor, Ten Eyck, Townley, Townsend, Tripp, Tuttle, Van Buren, Van Fleet, Van Horne, Van Ness, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, Wheeler, Woods, Woodward, Wooster Yates, Young—110.

NAYS—Messrs. Dodge, Hunter, Kent, Rhinelander, Spencer, Sylvester, J. R. Van Rensselaer, E. Williams, N. Williams—9.

The nineteenth section, (securing persons in their houses, papers, effects, &c.) was read.

Mr. Van Buren moved to strike out the section, as being unnecessary. Carried.

On suggestion of Mr. Root, the twentieth section, (requiring the militia to be in strict subordination to the civil power,) was expunged.

The question on the whole report, as amended, was then put and carried, as follows:

I. That the state shall be divided into eight districts, to be called senate districts, each of which shall choose four senators.

The first district to consist of the counties of Suffolk, Queens, Kings, Richmond, and New-York.

The second district to consist of the counties of Westchester, Putnam, Dutchess, Rockland, Orange, Ulster, and Sullivan.

The third district to consist of the counties of Greene, Columbia, Albany, Rensselaer, Schoharie, and Schenectady.

The fourth district to consist of the counties of Saratoga, Montgomery, Hamilton, Washington, Warren, Clinton, Essex, Franklin, and St. Lawrence.

The fifth district to consist of the counties of Herkimer, Oneida, Madison, Oswego, Lewis and Jefferson.

The sixth district to consist of the counties of Delaware, Otsego, Chenango, Broome, Cortland, Tompkins, and Tioga.

The seventh district to consist of the counties of Onondaga, Cayuga, Seneca, and Ontario.

The eighth district to consist of the counties of Steuben, Livingston, Monroe, Genesee, Niagara, Erie, Allegany, Cattaragus, and Chautauque.

And as soon as the senate shall meet after the first election to be held in pursuance of this provision, they shall cause the senators to be divided, by lot, into four classes of eight in each, and so that every district shall have one senator of each class, the classes to be numbered one, two, three, and four; and the seats of the first class shall be vacated at the end of the first year, of the second class at the end of the second year, of the third class at the end of the third year, of the fourth class at the end of the fourth year, and so on continually, in order that one senator be annually elected in each senate district.

Provided, That no person shall be eligible to the office of senator who shall not have attained the age of thirty years, and been five years a resident of this state, and who shall not, at the time of his election, be seized of a freehold estate in his own right within this state of the value of one thousand dollars over and above all debts and incumbrances charged thereon.

II. That a census of the inhabitants of the state be taken under the direction of the legislature, in the year 1825, and at the end of every ten years thereafter; and that the said districts shall be so altered by the legislature at the first session after the return of every census, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers and persons of colour not taxed, which districts shall remain unaltered until the return of another census. *Provided,* That every district shall at all times consist of contiguous territory, and that no county shall be divided in the formation of a senate district.

III. That the number of the members of assembly shall be fixed at one hundred and twenty-eight, and shall never exceed that number; and that the same shall be apportioned among the several counties of the state, as nearly as may be according to the number of inhabitants in each county, excluding aliens, paupers, and persons of colour not taxed, which apportionment shall remain unaltered until the return of another census: *Provided,* That every county heretofore established and separately organized shall be entitled to one member. And that in future no new county shall be erected, unless its population shall entitle it to a member.

IV. Any bill may originate in either house of the legislature; and bills passed by one house may be amended by the other.

V. The members of the legislature, shall receive a compensation for their services, to be ascertained by law, and paid out of the public treasury; but no increase of the compensation shall take effect, during the year in which it shall have been made. And no law shall be passed, increasing the wages of the legislature, beyond the sum of three dollars per day, unless by a majority of all the members elected to both branches of the legislature; and unless it shall be limited as to its continuance, to two years after the passage thereof, and the yeas and nays shall be taken thereon, and entered on the journals.

VI. No members of the legislature shall receive any civil appointment from the governor and senate or from the legislature, during the term for which he shall have been elected."

VII. No person being a member of congress, or holding any judicial or military office, under the United States shall hold a seat in the legislature. And if any person shall, while a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

VIII. That the power of impeachment, be vested in a majority of the members of assembly elected; and that all officers, holding their offices during good

behaviour, may be removed by joint resolution of the two houses of the legislature: *Provided*, That two thirds of all the members elected to the assembly, and a majority of all the members elected to the senate concur therein.

IX. That the assent of two thirds of the members elected in each branch of the legislature, shall be requisite to every bill appropriating the public monies or property for local or private purposes, or creating or renewing the charters of any body politic or corporate, for any purpose whatsoever.

X. That the proceeds of all lands belonging to this state, and of all lands that may hereafter be acquired by the state, (except such parts thereof as may be reserved or appropriated to public use, or ceded to the United States,) which shall hereafter be sold or disposed of; together with the fund, denominated the common school fund, shall be and remain a perpetual fund; the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this state; and that the rates of toll, not less than those agreed to by the canal commissioners, and set forth in their report to the legislature of the twelfth of March, one thousand eight hundred and twenty-one, shall be imposed on, and collected from all parts of the navigable communications between the great western and northern lakes, and the Atlantic ocean, which now are, or hereafter shall be made and completed: And the said tolls, together with the duties on the manufacture of all salt, within the then western district of this state, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; and the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars, otherwise appropriated, in and by the said act; and the amount of the revenue, established by the act of the legislature of March 30th, 1821, in lieu of the tax upon steam boat passengers; shall be, and remain inviolably appropriated, and applied to the completion of the canals, and to the payment of the interest, and reimbursement of the capital of the money already borrowed, or which hereafter shall be borrowed, to make and complete the navigable communication aforesaid. And that neither the right of tolls, on the said navigable communications nor the duties on the manufacture of salt as aforesaid; nor the duties on goods sold at auction aforesaid; as established by the act of the legislature, passed April 15, 1817; nor the amount of the revenue established by the act of the legislature, of March 30, 1820, in lieu of the tax upon steam-boat passengers; shall be reduced or diverted, at any time before the full and complete payment of the principal and interest of the money borrowed, or to be borrowed, as aforesaid. And it is further provided, that neither the salt springs, with as much land contiguous thereto as is necessary for the manufacture of salt, nor any part of the said canals, nor any section thereof, be sold or disposed of to any individual, or body politic or corporate whatever, but the same shall be and remain the property of this state.

XI. That no lottery shall hereafter be authorised in this state, and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by them.

XII. That the thirtieth article of the constitution of this state ought to be abolished.

XIII. That the fortieth article of the constitution ought also to be abolished; and that instead thereof the following be adopted:

"The militia of this state shall, at all times hereafter, be armed and disciplined, and in readiness for service; but that all such inhabitants of this state, of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, shall be excused therefrom, by paying to the state an equivalent in money; the legislature shall provide by law for the collection of such equivalent, to be estimated according to the expense in time and money, of an ordinary able bodied militia man."

XIV. That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

XV. No person shall be held to answer for a capital, or otherwise infamous crime, except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this state may keep with the consent of congress, in time of peace, and in cases of pettit larceny, under the regulation of the legislature, unless on presentment or indictment of a grand jury; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

XVI. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall ever be passed to curtail or restrain the liberty of speech, or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

THE APPOINTING POWER.

The Convention then proceeded to the consideration of the report on the appointing power, which was read by sections.

The first seven sections were respectively passed, as follows:

MILITIA OFFICERS.

That appointments and selections for offices in the militia ought to be directed, by the constitution, to be made in the manner following, viz.—

1. Captains, subalterns, and non-commissioned officers, by the written votes of the members of their respective companies.
2. Field officers of regiments, and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions.
3. Brigadier generals, by the field officers of their respective brigades.
4. Major generals, brigadier generals, and commanding officers of regiments or separate battalions, to appoint the staff officers of their respective divisions, brigades, regiments, or separate battalions.
5. The governor to nominate, and, by and with the consent of the senate, to appoint all major generals.
6. The adjutant general shall be appointed by the governor.
7. That it shall be the duty of the legislature to direct, by law, the time and manner of electing militia officers, and of certifying the officers elected to the governor.

The eighth section was then read as follows:

VIII. That in case the electors of captains, subalterns, or field officers of brigades, regiments, or battalions, shall neglect or refuse to make such election after being notified, according to law, the governor shall appoint suitable persons to fill the vacancies thus occasioned.

A discussion ensued thereon, between Messrs. Root and Van Buren, in which the former was in favour of striking it out, and the latter explained the reasons for retaining it.

Mr. Brooks made some remarks in explanation of the section, when the question thereon was taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Bacon, Beckwith, Birdseye, Breese, Briggs, Brooks, Buel, Child, Clyde, Collins, Dodge, Duer, Dyckman, Eastwood, Edwards, Fish, Hallock, Howe, Hunter, Lansing, Lawrence, Lefferts, M'Call, Moore, Munro, Paulding, Pitcher, Porter, Pumpelly, Rhinelander, Rogers, Rosebrugh Russell, Sage, R. Smith, Spencer, Stagg, Sylvester, Tallmadge, Ten Eyck, Van Buren, Van Fleet, Van Ness, J. R. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, Wheeler, E. Williams, N. Williams, Woodward, Yates, —54.

NOES—Messrs. Barlow, Brinkerhoff, Carver, Dubois, Ferris, Frost, Hogeboom, Humphrey, Hunting, Huntington, Hurd, Jones, Kent, King, Knowles, P. R. Livingston, Millikin, Nelson, Park, Pike, Radcliff, Richards, Root, Ross, Sanders, N. Sanford, R. Sandford, Schenck, Seaman, Seely, Sharpe, Sheldon, I. Smith, Starkweather, Swift, Taylor, Townsend, Tripp, Tuttle, Van Horne, E. Webster, Woods, Wooster, Young—44.

The ninth section also passed without amendment, as follows:

IX. That all the commissioned officers of militia shall be commissioned by the governor.

The tenth section was also read in the following words:

X. That no officer, duly commissioned to command in the militia, shall be removed from his office, but by the senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court martial pursuant to law.

The ninth section (requiring that all commissioned officers of the militia shall be commissioned by the governor) passed without amendment, and the tenth section was read, when Gen. Tallmadge moved to strike out the word, "senate," and insert the word, "council." When the fifth section was under consideration, Mr. T. had made a similar motion, but at the suggestion of Mr. King, consented to postpone the subject for the present. On reflection, he could not consent to postpone it longer, and therefore moved to strike out. In support of his motion, he explained his views at considerable length. His object was to relieve the senate from the exercise of any portion of the appointing power, and from the embarrassments which it would necessarily create. He was in favour of a council of appointment, composed of the first eight senators elected under the new constitution, and so for the other three classes of senators in rotation. To this council he would refer the appointment of all officers proposed to be appointed by the governor and senate, and also all officers for whose appointment no provision had been made. Before the question was taken, the Convention, on motion of Mr. Radcliff, adjourned.

THURSDAY, NOVEMBER 1, 1821.

The Convention assembled, and the minutes of yesterday were read and approved.

THE APPOINTING POWER.

The question before the Convention was stated to be on the motion of Mr. Tallmadge, to strike out the word, "senate," in the tenth section of the report on the appointing power, relating to the military appointments.

Col. Young called for the reading of a proposition, which was yesterday submitted for consideration by Mr. Tallmadge, containing his plan of a new council of appointment, which was read by the secretary, as follows:

"That the eight senators, composing the fourth class, shall constitute and be an executive council.

That the governor shall nominate, by message in writing, and by and with the consent of the said council, shall appoint all officers, of this state, whose appointments are not herein otherwise provided for; and which shall be established by law.

But the legislature may by law, from time to time, provide for the election by the people, or other mode of appointment of all city and county officers. Provided such law or alteration shall not take effect until two years after the same shall be enacted."

Col. Young occupied the floor about half an hour in support of this proposition. It appeared to him to propose a plan for making appointments to office, as perfect as human wisdom could devise. He passed in review all that the Convention had done on the subject of the appointing power, and pointed out the defects of every plan, which had hitherto been submitted. It was questionable whether we had fixed upon the best mode for the appointment of justices, and whether they might not more judiciously be appointed by the council now proposed.

Mr. King wished this subject might be postponed for the present. If the amendment of the gentleman from Dutchess should prevail, the proposition for a new council of appointment could not be here inserted.

After some remarks from Messrs. Spencer, Young, Tallmadge, and Van

Vechten, on motion of Mr. King, the tenth section of that part of the report relating to military appointments was postponed, with a view of taking up the second section of that part of the report, which relates to the appointment of civil officers. The effect of this motion was to try the sense of the house on Mr. Tallmadge's proposition for a new council of appointment. The section having been read,

Mr. Radcliff rose in opposition to this plan of a new council. He regretted that a proposition of so much importance had been deferred to near the close of our session, and until the appointing power had been settled by the Convention.

We had spent day after day on this subject, and after so much discussion, and such mature deliberation, a new project is now brought forward, entirely different from any thing that has been offered, which will annul all our proceedings on this subject, and compel us to travel back over the whole ground, which we have once passed. If on the eve of adjournment, the Convention were to be thus delayed by new projects, there would be no end to their labours. He then examined the provisions of this proposition, and replied to the arguments, which had been advanced in its favour. The plan might appear well on paper; so did the old council of appointment, and he contended that it was essentially the same as that, previously to the amendment of 1801. It was wholly visionary to suppose that this plan would dissolve the connection between the legislature and the appointing power. Of whom was this executive counsel to be composed? Of the governor and eight senators. Was this relieving the senate from the exercise of the appointing power? Would the burden be lightened by being taken from the shoulders of thirty-two senators, and cast upon the shoulders of eight? Disguise it as gentlemen would by new names, this was the old council of appointment revived, and for the abolition of which we had given an unanimous vote. The scenes of intrigue, and corruption, and faction which had so long disgraced the state, and of which the council of appointment had been the great source, were to be renewed and perpetuated. He had hoped, and he still hoped, we should for ever put an end to a state of things which had disgraced us in the eyes of the Union. The fears of gentlemen that the exercise of the appointing power would break down the senate, were wholly ideal. It was not so with regard to the senate of the United States, which had not been broken down, nor experienced any inconvenience from the exercise of the appointing power. If this plan was adopted, and a new council established, it would next be proposed that the appointment of sheriffs, clerks, coroners, justices, in one word, all the officers of the state, should be referred to it, and the counties be stripped of the privilege of selecting their own officers.

Mr. King. This subject has been maturely considered and well understood. It was at a time, too, when the Convention were fresh in their labours; was it expedient, then, at this late period, at the heel of the session, to disturb this settlement, by raising a question which, should it prevail, may unsettle every subject on which they had passed?

The motion of the mover may be correct, but the policy of the motion must be strongly doubted. There appeared, however, so much good will towards the proposition, that he asked to be indulged in a few remarks concerning it.

On all hands it is admitted, that, in the power of appointment, vested in the governor and senate, the former possesses the whole power of selection and nomination; and the latter merely that of giving or refusing their consent to such nomination.

The governor alone can nominate to the senate, without whose consent he cannot appoint. It is wisely determined that no council or associate is united with the governor in making his nominations, and neither the senate nor any body, has authority to advise him in the discharge of this trust, but he alone is responsible for the execution thereof.

On account of the public welfare, which requires that such men only as are qualified should be appointed to office, it is made the duty of the senate to inquire, not whether the person nominated is better qualified than any other for the office, for the business of selection is confined to the governor alone, but whether, in talents, integrity and reputation, he is qualified for the office to

which he is nominated by the governor. If the senate think he is so qualified, they will consent to his appointment; if they think otherwise, they will refuse their consent. In the first case, the appointment will be made; in the second, the governor must make another nomination, which will, in like manner, pass under the consideration of the senate. Thus, in practice, the governor and senate will be so far separated, that, on every occasion, each will act independently of the other. This power of the senate serves as a check against the abuse of the right of nomination; and if it be faithfully exercised, the power is a sufficient restraint.

Not content with this imitation of the model of the constitution of the United States, it is now proposed to take the youngest class of the senate, consisting of eight persons, or the fourth of this body, who were last elected, and without separating them from the senate, to make them what is called an *executive council*, to whom, instead of the senate, the governor shall make his nominations.

What satisfactory reason can be given for taking a fourth, instead of the whole, of the senate, for this service? It is intimated that this section of the senate, being lately elected, will be well informed of the opinions of the people; but in inquiring respecting the qualifications of a person nominated to office, how are the opinions of the people to assist those who are to make this inquiry? It is likewise urged, that, according to acknowledged maxims, the legislative and executive departments should not be mingled together. If the employment of the whole senate, as a check upon the executive, be a mingling of departments, will not one-fourth of that body be also a mingling of departments? The maxim was, however, misapplied, in this instance; wholly to unite two departments in one, would violate the maxim, which demands their separation; but to combine them partially, especially by using one as a check on another, was frequent in almost every free government, and useful in their construction.

This objection would apply, and forcibly too, to another provision of the proposed amendments, whereby the senate are constituted a court, which in the last resort is to correct the errors of the judiciary.

But the power of appointment does not necessarily belong to any one department, and though it is often given to the executive, it is also, especially by the constitutions of other states, almost wholly vested in the legislature.

An adequate power to check the executive being required, what body is more fit for the discharge of this duty than the senate? Who will possess more integrity, more experience, or greater weight of character? Admit that the assembly possess these properties in an equal degree, they are too numerous a body for the investigation and impartial decision of the questions which will arise on the nominations to office. Large bodies of men cannot be safely trusted in the settlement of facts. The senate, consisting of thirty-two members, and whose number is not to be increased, is large enough for all the purposes for which numbers are necessary, and not too large for their proper degree of knowledge respecting the subjects to come before them in the share of the power of appointment. If their numbers be much reduced, the senate would want weight and authority to check and control the executive power; besides, a small body is more liable to executive influence, and more exposed to intrigue and corruption, than a larger one. These were the general sentiments of the Convention when the subject was formerly before them.

Would it not be hazarding too much, to weaken this check by diminishing its numbers? The whole senate were not too many to constitute a sufficient check on the executive power, and when the whole were not too many, will one-fourth thereof prove sufficient?

The experience of the senate of the United States was of great authority; the deposit of the like power over appointments in the President and senate, has proved not only efficacious, but eminently salutary. Experience in all things, and in none more than government, is a safer guide than theory, however plausible it may appear.

Should the powers given to the governor and senate in appointments to office, be exercised in the separate and independent manner that has been practised between the President and senate of the United States, we may confidently hope

that intrigue and management, in whatever manner practised in the council of appointment, will hereafter be without influence in appointments made by the governor and senate.

Gen. Tallmadge thought the gentlemen who had spoken on this subject, did not perfectly understand the nature of the proposition which he had offered. It did not go, as had been stated, to undo that which had been already established; he had been an advocate for the principle of dispersing the appointing power into the several counties of the state; and he appealed to the candour of the Convention if that had not been the case. He had unfortunately found himself in a minority, when endeavouring to support that principle, at an early period of this session: and gladly would he now go back to support a plan which should have for its object the giving of this power to the people; but as that could not be rationally anticipated, he was willing, as one, to make a provision by which the legislature might hereafter alter the mode which had been adopted, if experience should show that it was not calculated to promote the welfare and prosperity of the people, whose happiness we are endeavouring to advance and perpetuate. By the plan which he recommended, no alteration could take effect till two years after its passage, during which time there would be two elections, and one for governor. This would be a sufficient check against the heat of party, by placing it beyond the period for which the majority of the legislature are elected, and affording ample time for an investigation of the plan recommended. It was his hearty wish, and he believed it to be the wish of many others in the Convention, that the election of county and town officers might be given to the people; and as the plans heretofore agreed to in the committee of the whole, had not been tried, he was unwilling to fix it beyond the power of the legislature to amend, if it should be found not conducive to the good interest of the community.

It could not be denied, that the plan which he proposed was marked with prudence in every step. It provides for a compromise of the various opinions which have been expressed by the Convention on this subject; but this was not the most important consideration in favour of it; nay, it was one of the most insignificant arguments in its favour. This plan shakes no principle which has been established, although it is considered so bold an attempt at this late period, to offer a proposition which is new to the Convention. It is a mistake that the principle is a new one. It has been before presented, in substance, to the consideration of this Convention; but at no time has there been an opportunity, till the present, to obtain a decision on it.

We have been told all along, that the intention was to disperse this power; that there was no danger on this head; and we have been thus brought to acquiesce in the belief that all would be right; but how have we descended into details in dispersing this power? Look at the appointments for the city of New-York, which are left unprovided for; and the immense number of appointments which are thrown upon the senate. Where are the health officers of New-York, men whom, as the President had stated in a former debate, can make fortunes of 70 or 80,000 dollars, in the course of a few years? On looking over the list of officers in this state, it will be found that one thousand are to be appointed by the senate; and this is not the worst, two thousand more are to be left to the discretion of the legislature, and many of them are far from being unimportant in their character. Where are all these to be disposed of? Shall they be put upon the other branch of the legislature? This surely cannot be the intention.

The honourable gentleman from Queens has claimed to be a *witness* in favour of the propriety of vesting this power in the hands of the senate; and as a proof of the correctness of that principle, he has referred us to the experience of the senate of the United States, where, he stated, party considerations had no operation. Mr. T. was willing to bow with all deference to the experience of that honourable gentleman, as far as it extended; but when he travelled out of the sphere of his personal acquaintance with a particular subject, he must beg leave to dissent from his conclusions, when they were palpably erroneous. He would call the attention of that honourable gentleman to the circumstances attending the appointment of General Armstrong, and see whether it supported the evidence of this willing witness, that party considerations did not operate

in the senate of the United States, which had only a negative upon the nomination of the president. Was not General Armstrong appointed a minister to France by the president in the recess of the senate; and after he had sailed, upon his nomination to the senate, did not that body make an effort to reject his nomination on party grounds, to disaffirm his appointment, procure his immediate recall, and disgrace the president and the administration, which would not confirm and support the nomination? Was not this project acted over in the senate of the United States, defeated by the casting vote of the venerable George Clinton, who now sleeps in peace?—and the administration of the Union, and indeed the honour of the nation, saved from disgrace in such a party triumph and party measure? And does the recollection of this witness fail him in all these circumstances? Other instances of party efforts in that senate could be detailed, but it cannot be necessary. That the senate of the United States is not free from party influence, cannot be denied; and will the honourable gentleman, whose fortune it has been to walk in the exalted spheres of life, and to act in that senate, so much elevated above the character of the senate of this state, reason from thence that the proceeding in the latter will not be more or less governed by the influence of the lobby? This witness is entitled to every degree of credit, when integrity and purity of intention are the criterion; but these, without experience of those scenes acted over in yonder lobby, may lead to inferences not warranted by fact, and inapplicable to the nature of the case before us.

Mr. T. said, he did not consider it necessary to defeat the argument, that thirty-two men were better adapted to the exercise of this power, than eight; his object was to show the importance of preserving, as much as possible, the purity of that body, in whose hands are placed our property, liberty, and lives. Let us not have our faith and our hope shaken, by a cession of so great a share of this contaminating power to our senate, and to our superior and last court, the court of errors. His fears were not, that the appointing power would be improperly exercised by the senate, but that the more important duties of legislators and judges would be lost sight of in the contentions for office. He disclaimed all solicitude where, when, or by whom, officers were appointed; his solicitude rose to higher objects. It was to guard the purity of the senate, and by the wisdom of its legislation, and the impartial and unsuspected administration of justice, to secure the prosperity and happiness of the state.

He would not be understood as proposing this plan for a council, as the best which human wisdom could devise, but as the best which he could hope to obtain, after knowing the sentiments of the Convention upon the question of electing officers in the several counties; and gladly would he have raised his voice in support of that plan which would give to the people the privilege of electing their own council in the eight districts, independently of either branch of the legislature. But knowing that that could not succeed, he had embraced this plan as the next best which he could rationally hope to obtain; and he should be sufficiently gratified, if, in the result, he could effect the primary object—of preserving from the danger of corruption, so important a branch of our government as the senate and court of errors, even without proving that eight are better than thirty-two, as an appointing power.

The great and leading object was to avoid the horrid consequences, so frightfully depicted by the honourable gentleman from New-York, (Mr. Radcliff,) of commingling with the legislation of your state, the contemptible and disgraceful squabbles for office. The honourable gentleman from New-York had portrayed those hidden scenes with great success and remarkable accuracy; he would certainly be entitled to full credit upon these matters, when it should be recollected, that he had spoken from so much *learning* and so much *actual experience* in those transactions. He has told us, that we might as well, indeed, take the old council of appointment.

We have heard of the *ghost* of that old council, and we are now told, that this is not its ghost, but the original in more terrific form. But, said Mr. T., the ghost of that council will never haunt me: my fortune has never depended, directly or indirectly, upon the good or ill will of that council. I have had no intercourse with it. Its good or evil genius haunts me not; and, therefore, I

do not fear to make, what the gentleman from New-York (Mr. Radcliff) is pleased to call "a bold proposition," to create another council. It is necessity, and not choice, which drives me to the measure. No possible mode is so bad as the unclean connexion with legislation. To justify this connexion, and frighten us with the very name of a council, we have been told that that council of appointment forced through the legislature the Cherry Valley bank. I speak not, said Mr. T., of any personal knowledge of these matters, but as deriving my knowledge from declarations made, in a former debate, by gentlemen now on this floor. We have also heard of the hard and untimely fate of the Franklin bank, which was *rejected* in committee of the whole on one day, and of its sudden resurrection, by the kind assistance of an honourable gentleman, who voted for its rejection, but whose mind had, during the night, undergone a revolution, and who on the next morning, moved a reconsideration, and the bank went smoothly and quietly through the house. *Fame* and fortune attended its progress; and, in due time, the council was not unmindful of its patron. But, why waste our time in detailing facts which are yet so fresh in the recollection of all, and in which some were actors who now hear me?

With so much history, and with such a volume of experience before you, why will you suffer the continuance of this illicit connexion between legislation and the appointing power? You must have an appointing power at the seat of government, to provide those offices which cannot be sent to the people for election.

You shrink from the responsibility of creating one. You pull down the old council, because of its corruption, and yet you impose upon the senate a portion of its load, and you give over the residue to the buffettings of party legislation. Be not alarmed at the name of council. It was the connexion with the branches of your legislature which ruined the present. It was chosen by the assembly, from the senate. It was the source and life of party. It gave character to your elections. The members of assembly were more often selected with views to control the choice of the council, than with regard to their fitness as legislators. When chosen, it was in that body where corruption was most active; where the wise workers of party most successfully managed to procure a selection for a council, of such individuals from the senate, as would best subserve the private objects of the principal workers of the machinery. But the proposed new council is subject to none of those evils. I would gladly have it elected by the people, and for no other purpose. But despairing to succeed in such a plan, the first eight senators annually elected, can make a good and safe council. They come fresh from the people. Elected as senators in the several districts, they are not committed to private views, and are not selected by direction of leaders. The assembly will be left to be chosen, without other motive than a fitness for their duties.

Let me not be accused of a desire to bring this power back to the seat of government. Far be it from me to wish it, if any other mode can be adopted. Disperse is my motto, and disperse my maxim; but when I see a system going into operation, which is calculated to burst asunder the bands of society, by bringing strife and contention into the local concerns of every county, and controling the choice of the supervisors by converting them into political instruments, rather than using them as they now are, as the faithful sentinels of the people's interest—and, add to these evils, the making your county judges, parties in these political strifes, and unfitting them to compose the members of an impartial and unsuspected court, and yet having them eligible to become members of the legislature, and, perhaps, commanding their elections by an improper use of their appointing power—I feel myself authorised to endeavour to establish any other plan than one so pregnant with every evil. Could the plan proposed by him be adopted, whereby provision would be made for the benefit of experience, as circumstances may require, and yet guard against the operations of party, we should unite prudence with safety; but by the plan proposed, what will be the result? Your governor nominates to the Senate five judges for each county in the state, and these same judges constitute, in their respective counties, a political caucus to further the views of the executive, whether they be salutary or pernicious; and upon these same judges depend all your inferior magistrates, for their appointment and continuance in

office. The power of these judges is under no control, and it may be again brought to bear in the legislature. If these evils shall be found to exist, ought we not to provide against their continuance, by giving to the legislature a power to remedy the plan proposed by the constitution? If they are not evils, experience will demonstrate it; and the constitution will continue, as we shall leave it, to govern the mode of appointments.

It was not, as had been suggested before, anticipated, that we shall, in this way, procure a better appointing power: but it is to keep from an immediate connexion with the legislature, these two branches of your judidicial establishment, that they may not destroy the usefulness of each other, and subvert the best principles of our republican institutions. If the power of appointment is vested in the Senate, may not a majority of that body, in party times, differ in political character from the executive, and in the conflicts arising from such a difference, may not the course of legislation be influenced, or even stopped? Have there not been instances where the Senate of this state have differed from your chief magistrate, and when all official communication between these two branches of your government was suspended? Is it to be expected, that this body of men will, at all times, be willing to obey the dictation of the executive? Can they always concur in the nominations which he shall please to make? Is it necessary to tell you, that unless his nominations are such as they shall be willing to approve and sanction, they will take advantage of their power and stop the wheels of government? Party will support them in such a measure.

How easy will it be for this body of men, by varying the salaries and jurisdiction of officers, to train them to the most submissive obedience in promoting their political or party views; and again, may not these same men possess nerve enough to force through the legislature any favourite object, by means of this complicated political machinery?

Experience has shewn, that the difficulties here suggested may arise, and that the men in our government are not wanting for nerve of this kind, and to avail themselves of such occasions. There were men who now heard him, who had been actors in such scenes, and which had given rise to a former convention; and should the plan continue, as at present adopted, the extent to which these evils may be carried, is not easily anticipated. We have heard much of the wise and discreet exercise of this kind of power, in the senate of the United States. But are gentlemen aware of the manner in which it is there exercised? Whenever executive business was announced, the galleries were emptied, the house was cleared, the doors were shut, and all the business was done in private. Was this Convention ready to adopt a measure which had to establish such a usage? He did not think the people of this state were yet prepared for such a state of things. The learned gentleman from New-York (Mr. Radcliff) has feelingly deprecated the horrors of the proposed council, and has declared he never will consent to establish another *conclave.* Does that gentleman wish or expect the senate to execute this new portion of executive duties, which we are about to impose upon them, before the public and with open doors? Will he again solicit the honour of a nomination from the governor, to some high office, and when his name is sent to the senate, will he hold his place in the lobby of that house, and, in mute silence, listen to a public discussion of his fitness, and have some senator, perhaps some personal foe, tear asunder his reputation, and drag to public view the foibles of his life? And yet this gentleman abhors a *conclave.* If such discussions of character are intended to be allowed, timely provide by another article in this constitution, for the personal protection of the senators, and their freedom of speech. And if not to be allowed, all inquiry, and all communication of information is shut out, and the senators will become, on this point, useless members. Is it not, therefore, more discreet, more fit and proper, that the performance of these delicate duties should be confided to a few men who can assemble for consultation, without public observation? The senate are now made the *removing* body, and where the causes for removal are to be discussed, would not this critical duty be more carefully and temperately performed by eight than by thirty-two? and when it is recollected that these eight are to be the first class of senators, elected with-

out concert in their several districts, and bringing with them the public sentiment, can there exist apprehensions for much cause of danger; and should conflicts ever arise between the executive and these eight senators in council, may we not yet hope that those conflicts would not be suffered to interrupt the progress of legislation, and those higher duties of a court of appeal? There was no system without its inherent difficulties; but, to his mind, the senate was the most objectionable.

Another, and an important consideration is this: whilst you leave with your senate the appointment of one thousand officers, and to the disposal of the legislature two thousand more, you are perpetuating the seeds of discord, and heaping up fuel to increase the flame of future disagreement and controversy. These difficulties will always exist till the emoluments of office are diminished, and they can never be diminished till the legislative and appointing powers are separated. Let one body have the appointing power, and another the legislative, and the emoluments of office would soon be so reduced, that strife and ambition for office would be done away; but whilst the two powers are exercised by the same hands, the case is remediless; the people can never hope for relief.

Here Mr. T. read from the constitution of Vermont, "If a man is called into public service, to the prejudice of his private affairs, he has a right to a reasonable compensation, and whenever an office, through increase of fees, or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature."

This, said Mr. T. is a sound political doctrine, and worthy of all imitation.

It is due to the honourable gentleman from Queens, to acknowledge, that there never has been a government established, in which the different branches have been kept distinct. History records but few instances where the legitimate despot would suffer himself to be encumbered with any other department which dared to think or to speak. But the patriots of all ages, who have laboured to ameliorate the condition of man, have placed their hope for the perfection of government, in the separation of its executive, legislative, and judicial departments. It is the fortune and the honour of our country, that we can boast, here were the principles of rational liberty first put into form and practice. Those immortal patriots, who had the honour of adjusting and combining the component parts of our government, were obliged, by way of compromise, to commingle the conflicting interests with which they had to deal. Assailed by a monarch and an hereditary nobility on the one hand—and on the other, alarmed with the terrors of democracy, they did much more than any other portion of the human race ever dared to do; but we, with the benefit of experience from their works, now tremble not to extend the plan which they so gloriously commenced. We have extended the rights of suffrage, and prostrated those distinctions which the influence of property had hitherto sustained —Let us proceed and consummate that perfectability in the condition and government of society which our fathers so nobly dared.

The question on inserting Mr. Tallmadge's amendment to the second section, was then taken by ayes and noes, and decided in the negative as follows:

NOES—Messrs. Bacon, Baker, Barlow, Birdseye, Briggs, Brinkerhoff, Brooks, Buel, D. Clark, R. Clarke, Clyde, Collins, Dodge, Dubois, Duer, Dyckman, Edwards, Fairlie, Ferris, Fish, Frost, Hallock, Hees, Hunter, Huntington, Hurd, Jay, Jones, Kent, King, Lawrence, Lefferts, M'Call, Millikin, Moore, Park, Paulding, Porter, Radcliff, Reeve, Rhinelander, Rogers, Rose, Rosebrugh, Sage, Sanders, N. Sanford, Seaman, Seely, Sharpe, R. Smith, Spencer, Stagg, I. Sutherland, Sylvester, Townley, Tripp, Van Buren, Van Fleet, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, E. Williams, Woodward.—68.

AYES—Messrs. Beckwith, Breese, Burroughs, Carpenter, Carver, Case, Child, Cramer, Eastwood, Fenton, Hogeboom, Howe, Humphrey, Hunt, Hunting, Knowles, Lansing, A. Livingston, P. R. Livingston, Nelson, Pike, Pitcher, Price, Pumpelly, Richards, Rockwell, Root, Ross, Russell, R. Sandford, Schenck, Sheldon, I. Smith, Starkweather, Steele, Swift, Tallmadge, Tay-

lor, Ten Eyck, Townsend, Tuttle, Van Horne, E. Webster, Wheeler, N. Williams, Woods, Wooster, Young—48.

The question then recurred to the tenth section of that part of the report which relates to military appointments, when the tenth, eleventh and twelfth sections were passed without amendment.

Gen. Root moved to add to the fifth section the following clause, which was carried :

"Brigade inspectors and chiefs of the staff departments, except the adjutant general and commissary general."

Mr. Van Buren moved to add to the eighth section the following words : "who shall hold their respective offices till a due election shall be made." Carried.

The whole of that part of the appointing power which relates to military appointments, was thereupon passed as follows :

MILITIA OFFICERS.

That appointments and selections for offices in the militia, ought to be directed by the constitution, to be made in the manner following :

I. Captains, subalterns, and non-commissioned officers, by the written votes of the members of their respective companies.

II. Field officers of regiments, and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions.

III. Brigadier generals, by the field officers of their respective brigades.

IV. Major generals, brigadier generals, and commanding officers of regiments or separate battalions, to appoint the staff officers of their respective divisions, brigades, regiments, or separate battalions.

V. The governor to nominate, and by and with consent of the senate, to appoint all major generals, brigade inspectors, and chiefs of the staff departments, except the adjutant general and commissary general.

VI. The adjutant general shall be appointed by the governor.

VII. That it shall be the duty of the legislature to direct, by law, the time and manner of electing militia officers, and of certifying the officers elected to the governor.

VIII. That in case the electors of captains, subalterns, or field officers of brigades, regiments, or battalions, shall neglect or refuse to make such election, after being notified according to law, the governor shall appoint suitable persons to fill the vacancies thus occasioned, who shall hold their respective offices till a due election shall be made.

IX. That all the commissioned officers of militia shall be commissioned by the governor.

X. That no officer, duly commissioned to command in the militia, shall be removed from his office, but by the senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court martial pursuant to law.

XI. That the commissions of the present officers of the militia be no otherwise affected by these amendments, than to subject those holding them to removal in the manner above provided.

XII. That in case the mode of election and appointment of militia officers now directed, shall not, after a full and fair experiment, be found conducive to the improvement of the militia, it shall be lawful for the legislature to abolish the same, and to provide by law for their appointment and removal, provided two-thirds of the members present in each house shall concur therein.

The first section of that part of the report which relates to the appointment of civil officers, was then read.

Mr. Radcliff moved to insert "secretary of state," and "attorney general," before the word "comptroller," so as to give the appointment of these officers to the legislature.

The motion was supported by Messrs. Radcliff and Root, upon the ground that these were important offices, the duties of which were connected with the legislature ; and opposed by Mr. Van Buren.

CHIEF JUSTICE SPENCER made a few remarks against the amendment, when the question was first taken on inserting the *secretary of state*, and carried.

On inserting the *attorney general*, Messrs. N. Williams and Spencer opposed the motion, and Mr. Root supported it. Carried.

Mr. FAIRLIE moved to strike out the word "treasurer," and leave the appointment of that officer as it was in the old constitution.

The amendment was supported by the mover, and opposed by Messrs. J. R. Van Rensselaer and Spencer, when the motion was put and lost, and the section passed without further amendment.

MR. RUSSELL offered the following substitute to the second section, down as far as the word "peace," in the fifth line:

1st. That there shall be an executive council for the state, consisting of the governor and eight councillors, who shall be constituted in the manner following, viz.

2d. That there shall be elected in each of the eight senatorial districts by the electors thereof, as often as a governor is elected, one person for a councillor, and the eight persons so elected, shall form an executive council with the governor, who shall have the power to appoint all officers in the state not otherwise directed.

3d. That the said council shall meet on the day of in every year, at the seat of government.

4th. That the governor shall be ex officio president of the said council, and shall have an exclusive right to nominate all state officers, but shall have but a casting vote in the council.

5th. That each councillor shall have the exclusive right to nominate all officers whose powers are to be exercised within the district for which he shall have been elected.

6th. That the secretary of state for the time being, shall be the secretary of the council, and record the doings of the same; and all the nominations and proceedings thereof shall be open and be published.

7th. That the said councillors shall hold no office under the government of the United States, which would prevent their holding a seat in the legislature of this state, or be eligible to an office by the said council during the time for which they shall be elected; and that they shall receive, as a compensation for their services, the same sum for wages and travel as may be allowed by law to members of the legislature.

8th. That the governor may convene the council whenever he may think the public good may require it, except when the legislature are in session.

The question on the substitute was taken by ayes and noes, and decided in the negative, as follows:

NOES.—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Briggs, Brooks, Buel, Case, D. Clark, R. Clarke, Collins, Dodge, Dubois, Dyckman, Fairlie, Fish, Frost, Hallock, Hees, Humphrey, Hunter, Hurd, Jay, Jones, Kent, King, Lawrence, M'Call, Millikin, Moore, Munro, Nelson Park, Paulding, Porter, Price, Radcliff, Reeve, Rhinelander, Rockwell, Rogers, Root, Rosebrugh, Sage, Sanders, N. Sanford, Seaman, Seely, Sharpe, I. Smith, R. Smith, Spencer, Stagg, I. Sutherland, Swift, Sylvester, Ten Eyck, Townley, Tripp, Van Buren, Van Fleet, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, E. Williams, Woods—74.

AYES.—Messrs. Beckwith, Brinkerhoff, Carver, Child, Cramer, Eastwood, Fenton, Ferris, Hogeboom, Howe, Hunt, Hunting, Huntington, Knowles, Lansing, Lefferts, A. Livingston, P. R. Livingston, Pike, Pitcher, Pumpelly, Richards, Ross, Russell, R. Sandford, Schenck, Starkweather, Steele, Tallmadge, Tayler, Townsend, Tuttle, E. Webster, Wheeler, N. Williams, Wooster, Young.—36.

MR. BRIGGS moved to strike out all that part of the section from the word "except," in the 4th line, to the word "appointed," in the 27th line, and insert a clause so as to give the appointment of sheriffs and clerks to the governor and senate.

The motion was modified by the consent of Mr. Briggs, and the question on inserting the word " sheriffs" after the word " appoint," in the third line, was taken by ayes and noes, add decided in the negative, as follows :

NOES—Messrs. Bacon, Baker, Barlow, Birdseye, Brooks, Carpenter, Carver, D. Clark, R. Clarke, Collins, Cramer, Dubois, Duer, Dyckman, Eastwood, Edwards, Ferris, Fish, Frost, Hallock, Hees, Howe, Hunt, Hunter, Hunting, Huntington, Hurd, Lawrence, A. Livingston, M'Call, Millikin, Moore, Park, Price, Pumpelly, Radcliff, Rhinelander, Richards, Rockwell, Root, Rosebrugh, Sage, Sanders, N. Sanford, Seely, Sharpe, I. Smith, R. Smith, Spencer, Stagg, Steele, Swift, Sylvester, Tallmadge, Townley, Townsend, Van Fleet, Van Ness, J. R. Van Rensselaer, Verbryck, Ward, E. Webster, Wendover, Wheeler, E. Williams, Woods, Wooster—67.

AYES—Messrs, Beckwith, Breese, Briggs, Buel, Case, Child, Clyde, Dodge, Fairlie, Fenton, Hogeboom, Humphrey, Jay, Jones, Kent, King, Lansing, Lefferts, P. R. Livingston, Munro, Nelson, Paulding, Pike, Pitcher, Porter, Reeve, Rogers, Rose, Ross, Russell, Schenck, Seaman, Starkweather, I Sutherland, Taylor, TenEyck, Tripp, Tuttle, Van Buren, Van Horne, S. Van Rensselaer, Van Vechten, Wheaton, N. Williams, Young—47.

Mr. Briggs then renewed his motion to strike out from the word ' except,' to the word ' appointed,' as above stated, and to insert the words, " but the justices of the peace, shall be elected by the people in the several towns in this state."

After some discussion by Messrs. King, Briggs, Van Buren, Root, and Buel, the question was taken by ayes and noes, and decided in the negative, 76 to 39, as follows :

NOES—Messrs. Barlow, Beckwith, Birdseye, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Carver, Case, Child, R. Clarke, Clyde, Cramer, Dodge, Dubois, Duer, Dyckman, Eastwood, Fairlie, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunting, Jay, Kent, Knowles, Lansing, P. R. Livingston, M'Call, Moore, Munro, Nelson, Park, Pike, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Rogers, Root, Rose, Rosebrugh Ross, Russell, Sage, Schenck, I. Smith, Spencer, Stagg, Starkweather, Steele, I. Sutherland, Swift, Sylvester, Taylor, Townsend, Tuttle, Van Buren Van Fleet, Van Horne, S. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheeler, N. Williams, Young—76.

AYES—Messrs. Bacon, Baker, Briggs, D. Clark, Collins, Edwards, Fish, Hallock, Hees, Hunter, Huntington, Hurd, Jones, King, Lawrence, Lefferts, A. Livingston, Millikin, Paulding, Pitcher, Porter, Rhinelander, Sanders, N. Sanford, R. Sandford, Seaman, Seely, R. Smith, Tallmadge, Townley, Tripp, Van Ness, J. R. Van Rensselaer, E. Webster, Wheaton, E. Williams, Woods, Woodward, Wooster—39.

Mr. Dodge moved to strike out all that part of the section after the word ' appoint,' in the 3d line, and insert the following : " All other officers not otherwise provided for by this Constitution."

Before the question on this amendment was taken, Mr. Birdseye moved to strike out the word ' except' in the 4th line, and insert the word " including," with a view to give the appointment of justices to the governor and senate. The question on striking out was taken by ayes and noes, and decided in the negative, as follows :

NOES.—Messrs. Bacon, Brooks, R. Clarke, Dubois, Duer, Edwards, Fish, Frost, Hallock, Hees, Howe, Hunter, Huntington, Hurd, Jay, Jones, Kent, King, Lansing, Lawrence, Lefferts, A. Livingston, M'Call Millikin, Moore, Munro, Paulding Porter, Price, Radcliff, Rhinelander, Rogers, Rose Rosebrugh, Sage, Sanders, N. Sanford, Seely, R. Smith Spencer, Stagg Swift, Sylvester, Tallmadge, Townley Townsend, Van Fleet, Van Ness, J. R. Van Renselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, E. Williams, Woodward.—58.

AYES.—Messrs. Barlow, Beckwith, Birdseye, Breese, Briggs, Brinkerhoff, Buel, Burroughs, Carpenter, Carver, Child, Collins, Cramer, Dodge, Dyckman, Eastwood, Fairlie, Fenton, Ferris, Hogeboom, Humphrey, Hunt, Hunt-

ing, Knowles, P. R. Livingston, Nelson, Park, Pike, Pitcher, Pumpelly, Reeve, Richards, Rockwell, Root, Ross, Russell, R. Sandford, Schenck, Seaman, I. Smith, Starkweather, Steele, I. Sutherland, Taylor, Tripp, Tuttle, Van Buren, Van Horne, Wheeler, N. Williams, Woods, Wooster, Young.—53.

Mr. Buel then moved to strike out all that part of the section which follows the words, "that is to say," in the sixth line, to the word, "appointed," in the twenty-seventh line, and insert the following:

"The boards of supervisors in every county in this state shall, at such times as the legislature shall direct, meet together, and they or a majority of them so assembled, may nominate a list of persons, equal in number to the justices of the peace to be appointed in the several towns in their respective counties—And the respective courts of common pleas of the said counties shall in like manner meet and nominate a list of the like number. And that it shall be the duty of the said boards of supervisors and courts of sommon pleas, to compare such lists at such time and place as the lagislature may direct, and if on such comparison the said boards of supervisors and courts of common pleas shall be found to agree, in all or in part, they shall file a certificate of such nominations in which such agreement is found, in the office of the clerk of the county; and the person or persons so found on both lists shall be justices of the peace. And in case of disagreement, in whole or in part, it shall be the further duty of the said boards of supervisors and courts of common pleas, respectively to transmit their said lists, so far as they disagree in the same, to the governor, whose duty it shall be to select from the said lists and appoint as many justices of the peace as shall be required to fill the vacancies."

The question on striking out and inserting, was taken by ayes and noes, and decided in the affirmative, 60 to 55, as follows:

AYES.—Messrs. Baker, Barlow, Beckwith, Birdseye, Breese, Brinkerhoff, Buel, Burroughs, Carpenter, Carver, Case, Child, R. Clarke, Clyde, Cramer, Dodge, Dyckman, Eastwood, Fairlie, Fenton, Ferris, Howe, Humphrey, Hunt, Hunting, Knowles, Lansing, P. R. Livingston, Munro, Nelson, Park, Pike, Pitcher, Price, Pumpelly, Reeve, Richards, Rockwell, Rogers, Root, Ross, Russell, Schenck, Seaman, Sheldon, Starkweather, Steele, I. Sutherland, Swift, Taylor, Townsend, Tripp, Tuttle, Van Buren, Van Horne, Wheeler, N. Williams, Woods, Wooster, Young.—60.

NOES.—Messrs. Bacon, Briggs, Brooks, D. Clark, Collins, Dubois, Duer, Edwards, Fish, Frost, Hallock, Hees, Hogeboom, Hunter, Huntington, Hurd, Jay, Jones, Kent, King, Lawrence, Lefferts, A. Livingston, M'Call, Millikin, Moore, Paulding, Porter, Radcliff, Rhinelander, Rose, Rosebrugh, Sage, Sanders, N. Sanford, R. Sandford, Seely, I. Smith, R. Smith, Spencer, Stagg, Sylvester, Tallmadge, Townley, Van Fleet, Van Ness, J. R. Van Rensselaer, Van Vechten, Verbryck, Ward, E. Webster, Wendover, Wheaton, E. Williams, Woodward.—55.

THE JUDICIAL DEPARTMENT.

Mr. Carpenter offered the following proposition on the judicial department which was ordered to be printed:

I. The supreme court shall consist of a chief justice and two justices.

II. The state shall be divided, by law, into a convenient number of districts, not less than four, nor exceeding eight, subject to alteration by the legislature, from time to time, as the public good may require; for each of which a district judge shall be appointed in the same manner, and hold his office by the same tenure as the justices of the supreme court; who shall possess the powers of a justice of the supreme court at chambers, and at the trial of issues joined in the supreme court, and preside in courts of oyer and terminer and general gaol delivery; and such equity powers may be vested in the said district judges, or in the courts of common pleas, or in such other subordinate courts as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor,

On motion of Mr. Dodge, the Convention then adjourned.

FRIDAY, NOVEMBER 2, 1821.

The Convention assembled as usual, and the minutes of yesterday were read and approved.

THE APPOINTING POWER.

The second section of the report of the committee of the whole on the appointing power in relation to civil offices was declared to be the subject for consideration, when the question was taken upon the residue of the same and passed without further amendment.

Mr. Dodge moved to reconsider the second section, and insert "district attornies," in the third line, after the word "appoint."

As Mr. D. was not present when this section was under debate in the committee of the whole, he wished to make a few remarks. It had been universally admitted in this house, and it was a truth which admitted not of contradiction, that the legislative, judicial, and appointing powers, should be separated. By giving this power to the judges, together with the appointment of clerks and the nomination of justices, you give them a very extensive influence and great power. They will influence their clerks, the district attorney, and the justices in their several counties. Many of the judges, in consequence of this influence, will be returned to the legislature. Thus all these offices will be united. The inevitable consequence of the connexion, is the injury of the judges in their judicial capacity. The office of district attorney is all-important to the county. They ought to execute their duties with fearless impartiality and fidelity. They are in some measure the guardians of the county. They are sometimes under the necessity of differing from the judges; and there have been, and probably will be again, cases where it becomes their duty to indict and prosecute the judges themselves. It is therefore all-important for the faithful discharge of his duties, that the district attorney should be independent of any appointing power in his own county. He felt that we were clothing our judges with too much political power; and he feared the consequence would be, that in some counties there may hereafter exist political judges.

The motion to reconsider was carried; when the question on the proposed amendment was taken and lost.

The third and fourth sections, relative to the appointment of sheriffs, clerks, and district attornies, passed without amendment.

The fifth section, relative to the appointment of mayors was read.

Mr. Lansing moved to insert after the word "state," the words "except the city of New-York," with the view of referring the appointment of the mayor of that city to the general appointing power.

Some discussion took place between Messrs. Sharpe, Munro, Young, Radcliff and Jay, when the motion was put and lost.

Mr. Munro moved to strike out the fifth section, and insert a clause, giving the appointment of mayors of all the cities to the governor and senate.

The question was taken by ayes and noes, and decided in the negative as follows:

NOES—Messrs. Bacon, Baker, Barlow, Briggs, Brinkerhoff, Brooks, Carpenter, Child, D. Clark, R. Clarke, Collins, Cramer, Dubois, Dyckman, Edwards, Ferris, Fish, Frost, Hallock, Hees, Howe, Hunt, Hunter, Huntington, Jones, Kent, King, Lawrence, Lefferts, P. R. Livingston, M'Call, Millikin, Moore, Paulding, Porter, Price, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rogers, Root, Rose, Rosebrugh, Sage, Sanders, N. Sanford, R. Sandford, Seaman, Seely, Sharpe, R. Smith, Spencer, Stagg, Starkweather, Steele, I. Sutherland, Swift, Sylvester, Ten Eyck, Townley, Tripp, Tuttle, Van Buren, Van Fleet, Van Ness, J. R. Van Rensselaer, Verbryck, Ward, Wendover, Wheaton, E. Williams, Woods, Woodward, Wooster—76.

AYES—Messrs. Beckwith, Birdseye, Breese, Buel, Burroughs, Carver, Case, Clyde, Dodge, Eastwood, Fairlie, Fenton, Hogeboom, Humphrey, Hunting, Jay, Knowles, Lansing, A. Livingston, Munro, Park, Pike, Pitcher, Rockwell, Ross, Russell, Schenck, Sheldon, Tallmadge, Taylor, Townsend, Van Horne, Van Vechten, E. Webster, Wheeler, N. Williams, Young—37.

Mr. Buel moved to strike out the whole clause, without inserting a substitute, leaving the mayors to be appointed or elected, according to the provisions of the eleventh section. The motion was supported by Mr. Buel, and opposed by Messrs. Van Vechten and Radcliff. Lost.

Mr. Bacon moved to amend the section by inserting a clause placing the presidents of incorporated villages upon the same footing with regard to appointment as mayors.

Messrs. Root and N. Williams hoped the motion would not prevail, and pointed out some of the inconveniences which would result from such a provision. Lost.

Mr. Van Vechten moved to amend the section by inserting after the word "state," "except the city of Albany;" which was carried, 36 to 35.

Gen. Root then moved to reconsider the vote on excepting the mayor of New-York. The charter provided for the appointment of mayor, and we had no right to alter charters.

The motion was opposed by Messrs. Edwards, Briggs, Sharpe, and Munro, when the question on the amendment was taken and carried.

Mr. Buel moved to except the city of Troy. Carried.

Mr. Radcliff moved to except the cities of Hudson and Schenectady.—Carried.

Mr. Briggs moved to except all other mayors whatsoever.

Mr. Sharpe called for the ayes and noes on the section as amended, which was as follows: "That all the mayors of all the cities in this state, except the cities of New-York, Albany, Troy, Hudson, and Schenectady, be appointed by the common councils of the said respective cities." Mr. S.'s object in calling for the ayes and noes, was to give gentlemen who introduced this farce, an opportunity to record their names.

A long discussion was had, when Mr. Sharpe withdrew his motion for taking the ayes and noes.

It was then moved to reconsider the several amendments. Carried.

Mr. Radcliff moved to strike out all the amendments just agreed to in Convention, so as to leave the section as adopted by the committee of the whole and printed.

Gen. Root called for a division of the question on Mr. Radcliff's motion, so as to decide first and separately on that part of the amendment which relates to the appointment of the mayor of the city of Albany.

The president decided that the motion was divisible, and said that the question would be put accordingly.

Some desultory debate took place relative to the state of the section; some members contending that the vote of reconsideration expunged the amendments of course, and left the section as originally reported without amendment.

The President decided that the vote for reconsideration merely opened the section as amended to discussion, and to the amendments' adoption or rejection; but did not, without a further motion and vote, dispose of the amendments already adopted.

The motion of Mr. Radcliff was then withdrawn; when

Mr. Sharpe moved to strike out the whole section as amended, and insert the words as they stand in the printed report, viz. "That the mayors of all the cities be appointed by the common councils of the said respective cities."

The question was taken by ayes and noes, and decided in the affirmative, as follows:

AYES—Messrs. Bacon, Baker, Barlow, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, D. Clark, R. Clarke, Collins, Dubois, Duer, Dyckman, Edwards, Fairlie, Ferris, Fish, Hallock, Hees, Howe, Hunt, Hunter, Huntington, Hurd, Jones, Kent, King Lawrence, Lefferts, P. R. Livingston, M'Call, Millikin, Moore, Paulding, Porter, Price, Pumpelly, Radcliff, Rhinelander, Rogers, Ross, Rosebrugh, Sage, Sanders, N. Sanford, R. Sandford, Seaman, Seely, Sharpe, I. Smith, R. Smith, Spencer, Stagg, Starkweather, Sylvester, Ten Eyck, Townley, Tripp, Van Buren, Van Fleet, Van Herne, Van Ness, S. Van Rensselaer, Verbryck, Ward, E. Webster, Wendover, Wheaton, E. Williams, Woods, Woodward, Wooster.—73.

NOES.—Messrs. Beckwith, Birdseye, Breese, Buel, Carver, Case, Child, Clyde, Cramer, Dodge, Eastwood, Fenton, Frost, Hogeboom, Humphrey, Hunting, Jay, Knowles, Lansing, A. Livingston, Munro, Nelson, Park, Pike, Pitcher, Reeve, Richards, Rockwell, Root, Rose, Russell, Schenck, Sheldon, Steele, I. Sutherland, Swift, Tallmadge, Taylor, Townsend, Tuttle, J. R. Van Rensselaer, Van Vechten, Wheeler, N. Williams, Young—44.

The 6th section, relative to coroners, was read.

It was moved to strike out the words "appointed or," so as to make the coroners elective by the people; which after some discussion, was carried, and the section passed.

The seventh eighth, ninth, and tenth sections relative to masters and examiners in chancery; clerks of courts; and justices of the peace in New-York, passed without amendment.

The 11th section, relative to officers chosen by the people, and to other officers not provided for by this constitution, underwent a few verbal amendments, when Mr. Jay offered the following proviso:

"Provided, that no officers shall be appointed by the legislature, or by any persons elected by them."

In offering this proviso, Mr. Jay went into a full explanation of the object he had in view. A very large number of offices had by this section been left to the disposal of the legislature, and were to be filled in such manner, as that body might from time to time direct. He believed the whole number of appointments, for which no provision had been made, and which it had been decided to throw into the hands of the legislature, amounted to two or three thousand. As the section now stood, the legislature were left at liberty, either to make those appointments directly, or to create some other body, which would be completely under its control, to exercise the residue of the appointing power left at its disposal. It appeared to him, that this power was liable to abuse, and would lead to evils similar to those we had experienced from the old council; and he therefore thought proper to offer a proviso, which would in some measure be a safeguard against such abuses.

Mr. E. Williams was decidedly in favour of the proviso. If it were not adopted, we were about to experience the scenes of intrigue and scrambles for office, to which the old council of appointment had given rise. The mode of appointment would shift as often as the politics of the legislature; and it would be an object to obtain a seat in the house, for the purpose of having a voice in the disposal of these appointments. This power would be a bone of contention, and would be wielded as a political engine.

Col. Young was unable to foresee so many dangers and so much corruption from the exercise of this power by the legislature as had been anticipated. It was already expressly provided, that no member of the legislature could accept of an office, and he knew no reason why that body might not direct the mode of appointing these officers with perfect safety.

Mr. Munro was alarmed at the facts which had been disclosed this morning. It appeared that about three thousand offices have been left at the disposal of the legislature. He had been entirely mistaken on this subject, and had he been aware of the extent of the appointing power, for the exercise of which no provision had been made, he should on former occasions have acted and voted very differently from what he had done. He could not approve, and his constituents would never agree, to a constitution containing such a provision. It was worse, if possible, than the old council of appointment.

Mr. Van Buren believed gentlemen were unnecessarily alarmed on this subject. The offices left to the legislature had been greatly exaggerated both in number and importance; and he entertained no doubt that the power would be discreetly exercised.

Mr. Sharpe was opposed to the proviso. It was, in his opinion, an unnecessary check. We had, as it had been remarked, determined that no member of the legislature could accept of an office while he held a seat in that body; and he thought all the alarm which some gentlemen had felt was entirely groundless.

Mr. Duer supported the proviso. He fully concurred in the reaosns which

had been urged in its favour. We were giving to the legislature the power of controlling the whole appointing power, which was liable to the greatest abuses, and would be used as a political engine to subserve the purposes of ambitious and corrupt individuals.

Gen. Tallmadge rejoiced that gentlemen were at length able to perceive the force of the remarks he had made on this subject in the debate of yesterday. He had then pointed out the extent and importance of the offices, for the appointment to which no provision had been made. It would be found that after all we had said and done in relation to the appointing power, a very small portion of it had been disposed of. He should vote against the proviso, because he did not think it a sufficient guard against the abuses which had been anticipated.

Judge Van Ness believed that some other plan should be devised for the appointment of the officers left to the legislature by this section. In his opinion the power should either be referred to the governor and senate, or the offices made elective by the people ; and with this view he had drawn up a substitute or amendment to this section, which he then read in his place.

Mr. N. Williams said we had manifested a marvellous distrust of the legislature. These officers were a kind of floating capital, that might properly be thrown into the hands of the legislature. If his estimate was correct, the whole number of the corps of officers was only 2,467. Many of them were unimportant, and there would be no risk in leaving the disposal of them to the legislature.

Mr. Van Buren stated his object to be, to relieve the governor and senate from the duty of making these unimportant appointments. Gentlemen seemed to act upon the supposition that the legislature would in all cases be corrupt, and defeat the wishes of their constituents. It was more natural to suppose, that as the legislature emanated immediately from the people, it would make such a disposal of these minor offices as would give general satisfaction.

Mr. Duer again advocated the proviso. It was important to guard against the abuse of this power by the legislature.

Messrs. Briggs, Burroughs, and Root, opposed the proviso, upon the ground that the power would be safely deposited, and no doubt discreetly used.

Mr. Jay modified his proviso, by inserting " except such as are at present so appointed."

The question was then taken by ayes and noes, and decided in the negative, as follows :

NOES—Messrs. Baker, Barlow, Beckwith, Birdseye, Breese, Briggs, Brinkerhoff, Brooks, Burroughs, Carver, Case, Child, D. Clark, R. Clarke, Collins, Cramer, Dodge, Dubois, Dyckman, Eastwood, Edwards, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunter, Hunting, Hurd, Knowlos, Lefferts, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, Porter, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seaman, Seely, Sharpe, I. Smith, Starkweather, Steele, Swift, Tallmadge, Taylor, Townsend, Tripp, Tuttle, Van Buren, Van Horne, Verbryck, E. Webster, Wendover, Wheeler, N. Williams, Woods, Woodward, Young—77.

AYES—Messrs. Bacon, Duer, Fish, Hallock, Hees, Huntington, Jay, Jones, Kent, King, Lansing, Lawrence, Munro, Paulding, Pitcher, Rhinelander, Rogers, Rose, Sanders, R. Smith, Spencer, I. Sutherland, Sylvester, Ten Eyck, Van Fleet, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Ward, Wheaton, E. Williams, Wooster—33.

Mr. Munro then moved to strike out all that part of the section which follows the word " people," in the sixth line, and insert, " or be appointed by the governor, with the consent of the senate."

Some objections were offered to the amendment, and it was withdrawn by the mover. The section, as amended, then passed.

The several sections of that part of the report relating to the tenure of office, passed, with a few unimportant amendments, except the fourth section, which was stricken out.

Mr. Edwards made an ineffectual effort to render the tenure of the office of first judge for the city and county of New-York during good behaviour, instead of the term of five years.

The report on that part of the subject of the appointing power, which relates to civil officers, was then passed, as follows :

CIVIL OFFICERS.

I. The secretary of state, comptroller, treasurer, attorney general, surveyor general, and commissary general, to be appointed as follows, to wit : The senate and assembly shall each openly nominate one person for the said offices respectively, after which nominations, they shall meet together ; and if, on comparing their respective nominations, they shall be found to agree, the person so designated shall be deemed appointed to the office for which he is nominated. If they disagree, the appointment shall be made by the joint ballot of the senators and members of assembly so met together as aforesaid.

II. That the governor shall nominate by message, in writing, and with the consent of the senate, shall appoint all judicial officers, except justices of the peace ; who shall be appointed in manner following, that is to say :

The boards of supervisors in every county in this state, shall, at such times as the legislature may direct, meet together, and they or a majoriy of them so assembled, shall nominate a list of persons, equal in number to the justices of the peace to be appointed in the several towns in their respective counties ; and the respective courts of common pleas of the said counties shall in like manner meet and nominate a list of the like number. And that it shall be the duty of the said boards of supervisors and courts of common pleas, to compare such lists, at such time and place as the legislature may direct, and if on such comparison the said boards of supervisors and courts of common pleas shall be found to agree, in all or in part, they shall file a certificate of such nominations in which such agreement is found, in the office of the clerk of the county ; and the person or persons so found on both lists shall be justices of the peace. And in case of disagreement, in whole or in part, it shall be the further duty of the said boards of supervisors and courts of common pleas respectively, to transmit their said lists, so far as they disagree in the same, to the governor, whose duty it shall be to select from the said lists and appoint as many justices of the peace as shall be required to fill the vacancies. That every person so appointed a justice of the peace, may hold his office for four years, unless removed by the county court or court of common pleas, for causes particularly assigned by the judges of the said court. And that no justice of the peace shall be so removed, until notice is given him of the charges made against him, and an opportunity offered him of being heard in his defence.

III. That sheriffs, including the sheriff, register and clerk of the city and county of New-York, and county clerks, shall be chosen by the electors of the respective counties once in three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices, respectively. They may be required by law to renew their security from time to time, and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made surety for the sheriff, or responsible for his acts ; and the governor may remove any such sheriff, clerk or register, at any time within the said three years, for which the said sheriff, clerk or register shall be elected, given to such sheriff, clerk or register a copy of the complaint or charge against him, and an opportunity of being heard in answer thereto, before any decision or removal shall be made.

IV. That the clerks of courts except county clerks, be appointed by the courts of which they respectively are clerks. And district attornies by the courts of common pleas.

V. That the mayors of all the cities in this state be appointed by the common councils of the said respective cities.

VI. That as many coroners as the legislature shall direct, not exceeding four for each county, including the city and county of New-York, shall be elected in the same manner as sheriffs are directed to be elected ; and shall hold their offices for the same term, and be removable in like manner.

VII. That the masters and examiners in chancery, shall be appointed by the governor, with the consent of the senate ; that the masters and examiners in chancery shall be removable by the senate, on the recommendation of the governor ;

and they shall hold their offices for three years, unless sooner removed by the senate, on the recommendation of the governor.

VIII. That the clerk of the court of oyer and terminer, and general sessions of the peace, in and for the city and county of New-York, be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of the said court.

IX. That such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the several courts; or by the governor, with the consent of the senate, as may be directed by the legislature.

X. That justices of the peace, in and for the city and county of New-York, to wit: The special justices, and the assistant justices, and their clerks respectively, which now exist in said city, shall be appointed by the corporation of said city; and hold their offices for the same term that justices of the peace, in other counties of this state, are entitled to hold the same, and be removable in like manner.

XI. That all the officers which are at present elected by the people, continue to be so elected; and all other officers, whose appointment is not provided for by this constitution, and all officers who may be hereafter created by law, may be elected by the people, or appointed as may from time to time, by law, be directed.

TENURE OF OFFICE.

I. The treasurer shall be chosen annually.

II. The secretary of state, comptroller, attorney general, surveyor general, and commissary general, shall hold their offices for three years, unless sooner removed by concurrent resolution of the senate and assembly.

III. Judges of the courts of common pleas, and recorders of cities, to be appointed for five years, removable by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended.

IV. Mayors of cities to be appointed annually.

V. Clerks of courts, and district attornies, shall hold their offices for three years, unless sooner removed by the courts appointing them.

THE JUDICIAL DEPARTMENT.

The report of the committee of the whole on the judicial department was next in order, and was read by the secretary, as follows:

"The legislature shall have power to establish, from time to time, such courts of law subordinate to the supreme court, and such courts of equity subordinate to the court of chancery, as the public good may require."

Mr. R. Clarke moved that the proposition of the honourable gentleman from Tioga (Mr. Carpenter) submitted yesterday, be received therefor as a substitute.

In support of the motion, Mr. Clarke remarked, that a proposition of this sort was loudly called for by the necessities of the people.

It contemplated, in the first place, a reduction of the supreme court. And on this point he would observe, that the object was not merely to remove the present incumbents—but to establish an useful system for the state. We had already removed from them a part of their burthens. We had abolished the council of revision, which had been an ungracious, but heavy burthen upon them; and it was contemplated to establish them as a court of appellate jurisdiction only. Being thus relieved, he thought there would be no necessity for more than three judges to constitute that court; and it was deserving of much consideration, how far it was expedient from feelings of delicacy, to retain a greater number of officers than the public necessities required, and to tax the community for their support.

In the second place, the substitute proposed to establish district courts. These were imperiously called for by the exigencies of the public. The judges of the supreme court had probably done as much and as well as they could, but it was notorious that the short space allowed for the sittings on the circuits, did not admit of an opportunity for that careful and patient investigation, and deliberate discussion and decision of the causes before them which the fair and con-

plete administration of justice demanded. It was true that the number of judges would be increased; but he believed it would be favourable to the solid economy and interest of the state. At present it is often necessary for suitors, and their witnesses, to go home from the court because their causes cannot be tried, owing to the pressure of time upon the judge. This would be remedied by the system proposed. Certain justice, and prompt justice, would then be extended to all the people of the state.

In the third place, the equity powers that are proposed to be given to the district courts, are important. It might, perhaps, be thought presumptuous in him to express an opinion on this subject; but this he did know, that to a large part of the state, the present chancery system was worse than useless. By this remark he intended no disrespect to the honourable gentleman who now fills that station. He believed that the chancellor had performed the duties of his office as well as any man could perform them. But the defect lay in the system; and indeed he almost despaired of another chancellor who would perform his duties as well as the present incumbent, and this very fact convinced him (Mr. C.) of the necessity of an alteration in that court. The fact was, that the chancellor cannot carry equity into the various counties in the state. Those who are remote, especially, cannot maintain their equitable rights, except at an expense that is equivalent to a denial of them. Mr. C. alluded to a case of ejectment, in which a party, to obtain justice, had resort to the court of chancery. In winning his farm by a decree, he lost his farm in the costs. This was but one in the many instances that exist. The people are disheartened and discouraged. If they have no other than an equitable claim, they are induced to succumb, for by pursuing it they are certain to be the losers.

Chief Justice Spencer remarked, that it would perhaps be expected that the judges should express those views in relation to the judicial department which their experience had suggested. With regard to the specific substitute before the Convention, it could affect him personally but little. In less than five years his office would expire by constitutional limitation; and it was known for sometime past to his friends, that he had contemplated resigning it. He had received it under the administration of the venerable first governor of this state, under the present constitution. He had held it eighteen years—and during a very tempestuous period of our public affairs. Although he had perhaps possessed strong party feelings, yet he had always endeavoured to suppress them as a judge.

In the station in which judges were placed, it was to be expected that they would be best able to discern the defects of the present system, and most competent to devise an adequate remedy. It had occupied their deliberate attention for some years. There were at first but three judges of the supreme court. Another was afterwards added, and the number was ultimately increased to five. When there were four judges the population of the state did not exceed one half of its present number. There were then but twenty counties—there were now fifty-two; and it was not to be disguised, that the judges had not sufficient time for the performance of their duties. They held four terms in a year, and usually for three weeks in each term. They were sometimes obliged to break up before the business could be disposed of, to go on the circuit. He had been six months on the circuits in the course of a year, and had sometimes not returned until within a fortnight before the term—and then all the intervening time was necessarily occupied in examining and preparing for decision the cases that had been argued at the preceding term. This had often occasioned them pecuniary loss, and he could say, that if ever men had been devoted to public business, with a desire to discharge the duties of an office with integrity and despatch, it has been the judges of your supreme court; but the increasing population of the state, together with the addition of new counties, have rendered it almost impossible for them longer to discharge the duties of that office. At the last session of our legislature, there were three or four new counties erected, in which there must hereafter be circuits holden, which will necessarily require so great a share of time in addition to that now required to attend the different circuits of the state, that no time will be left for study or deliberation. There had already been a number of propositions submitted to the consideration of this Convention, one of which was to increase the number of su

preme judges, and to divide them into two classes; another to reduce their number, and appoint circuit judges. It had been his opinion, and the opinion of his associates, that with the addition of one or two circuit judges, the present court would be able to do all the business that would be required for many years. They never had been desirous of being released from their circuit duties entirely, because they had considered it for the best that they should mingle with the people in the different counties of the state. It is rational to suppose that such a plan is best calculated to give satisfaction among the people; as a judge coming from a remote part of the state must be supposed to be a stranger to the parties who are called before him. They had, therefore, only wished to be released from that part of this duty which it was not convenient for them to perform. The objections raised to this plan have been, that no man well qualified for that station, (and it must be a man well read in the law to discharge the duties of that office) would accept of it, unless he could be placed out of the reach of a removal at every change of party. It would be, indeed, hazarding too much, for a gentleman of the profession to abandon his business for this office, when he has no assurance of holding it any longer than a particular party may predominate, and thus rendering himself liable to fall a sacrifice to their ambition, when perhaps he has not been appointed two years.—This evil can be remedied by giving them a tenure of office equal to that of the chancellor and judges of the supreme court, and leaving it to the legislature to provide such salaries as they may think proper.

With these considerations, men of the first legal acquirements, and men of integrity and character, may be obtained. It will afford a sufficient inducement for a man to abandon his business, to accept of an office the tenure of which is for life, or till he arrives at the age of sixty. It has been said that their being considered inferior to the supreme court, would be an objection to that office. The office would certainly be very respectable, and they would be qualifying themselves to fill the place of chancellor, or to take a seat upon the bench of the supreme court; and there could not be a better school.

Mr. S. said he would take the liberty to propose a plan, about which, however, he had no great anxiety, further than the public good was concerned; but as he should probably not have an opportunity after the present day, to present it, he hoped he should receive the indulgence of the committee, as his official duties would compel him to leave town to-morrow.

Mr. S. remarked, that he took a seat upon the bench of the supreme court eighteen years ago, since which his whole time had been devoted to a discharge of the duties incumbent on him in that station. The salary of that office, had barely enabled him to support his family and educate his children, without laying up a dollar from that source, more than he had when he accepted the office. He had abandoned his profession, which was far more lucrative than the office which he accepted, and he had received that appointment under the sanction of the constitution, with a pledge, that he should hold it till he arrived at the age of sixty, unless removed for mal-conduct. His term of service by that limitation, would expire in about four years; but if the public good required his removal, amen, to it. The Convention had an undoubted right to do it if they thought proper, notwithstanding it would appear rational, that those who had received that office under the old constitution should continue till their term expired by law. He did not ask this, but merely suggested it for the consideration of the Convention; and as he had heretofore endeavoured not to trespass upon the patience of that body, he would trouble them with no further remarks, than to introduce his proposition; which was as follows:

"That there shall be appointed as many judges as the legislature may from time to time direct and prescribe, of the degree of counsellors of law, in the supreme court, to be called circuit judges; whose duty it shall be to hold in such counties as the legislature shall designate, courts of oyer and terminer and goal delivery, circuit courts and sittings; and to perform such other judicial duties as shall be required of them by law. And the judges, thus to be appointed shall hold their offices by the same tenure as the judges of the supreme court; and shall, ex officio, be members of the court for the trial of impeachments and the

correction of errors, in the same manner, and under the same regulations, as the chancellor and the judges of the supreme court are now members thereof."

He had omitted to say any thing of the court of equity, out of deference to the honourable chancellor; and he was of opinion that if this plan was adopted, it would obviate all the existing difficulties. It was therefore submitted to the consideration of the Convention, whom he should not be able to address again on the subject.

Mr. Wheeler considered this an important question; it was one on which the most learned in the law could not agree. It was an honour to the honourable mover to have submitted a proposition which should afterwards be so nearly imitated by one presented by the chief justice of the state: but he could not believe him guilty of the motives imputed to him by the honourable gentleman from Albany. That something is necessary no one pretends to deny: it is confirmed by the present incumbents in the high judicial departments of our state: and the only question now is, what will be the best way to remedy the existing evil. It has been proposed to have two courts possessing co-ordinate powers; but this has been rejected. The plan of the gentleman from Tioga, (Mr. Carpenter,) recommends the appointment of circuit judges, and on this plan it will be necessary to reduce the present number of supreme judges; but it does not declare that any violence shall be committed upon the present incumbents; and, indeed it cannot affect them very immediately as it will take some time to carry our new constitution into operation.

We are informed by the honourable chief justice, that it cannot be long, before the public will be deprived of his usefulness and experience upon the bench, and we are aware that his labours have been honourable to himself and useful to the public; but would it not be dishonourable to the judges of our supreme court, to revolt at the idea of falling a sacrifice to the public good, if necessity should demand their removal? Have we not already altered the tenure of the office of more than fifty judges in this state, who hold for the same time that they do?

Mr. Wheeler did not consider himself competent to argue this question, but he called on the honourable gentlemen of the law, to come forward and let the Convention profit by their wisdom, on this important subject. He conjured them by all that was dear to their country, and the character of the state, to use their best endeavours to establish a system, which should have for its end the happiness and prosperity of the community.

Mr. Radcliff hoped that the honourable chancellor would favour the Convention before adjournment with a proposition he intended to present, that it might be printed.

Chancellor Kent remarked, that he had prepared no definite proposition for the consideration of the Convention. His sentiments on the subject had been previously submitted. He thought it was expedient to vest in the subordinate common law courts equity powers to a limited extent.

Mr. Munro wished to learn whether the Chancellor intended to recommend to the people of this state, to blend chancery powers with common law jurisdiction?

Chancellor Kent replied, that he could not foresee that such a course would destroy the system or ruin the state. The chancery powers would probably become too great for any one man to perform, and whether a part of that power was confided to masters of the rolls or vice-chancellors was not perhaps very material.

The proposition of the chief justice, and the report of the committee were ordered to be printed.

The Chancellor had leave of absence for the remainder of the session.

Mr. Fairlie offered the following resolution:

Resolved, That one copy of the journals of this convention be transmitted by the secretary of state to the clerk of each county, to be deposited in his office, and that the surplus copies of the said journals be deposited in the secretary's office.

Adjourned.

SATURDAY, NOVEMBER 3, 1821.

The Convention assembled at the usual hour, and the journals of yesterday were read and approved.

Mr. Wendover offered the following as a preamble to the amended constitution.

We, the people of the state of New-York, acknowledging with gratitude the beneficent Providence of Almighty God, in securing to us the blessings of a free government, as settled and handed down by our fathers of the revolution ; and desirous to improve and perpetuate them for ourselves and posterity: Do ordain, establish, and declare this constitution and form of government.

Referred to the committee of which Mr. Yates is chairman.

Col. Young offered the following resolution :

" *Resolved*, That the lieutenant-governor be ex-officio a senator," and moved that it be referred to a select committee.

Mr. Munro disapproved of the resolution, and wished it might be referred to a committee of the whole.

Mr. Sheldon was opposed to the proposition, inasmuch as it would give to one of the districts an additional member, and therefore an undue influence in the senate.

Col. Young supposed there could have been no objections raised to the resolution ; but as some opposition was manifested, he would withdraw it.

THE JUDICIAL DEPARTMENT.

The Convention then resumed the unfinished business of yesterday, the Judicial Department.

Mr. Carpenter's substitute was stated to be first in order, which was read.

Mr. Buel. It was not my intention to have occupied the time of the Convention by any remarks on the plan proposed by the gentleman from Tioga ; but the call which my friend from Washington yesterday made upon the professional members of the Convention, to come forward and support the plan, if they approve of it, and to point out its defects, if they dislike it, seems to impose on them the obligation of declaring their sentiments in regard to the proposition.

If I stood here merely as a lawyer, consulting my own private interest, I would have no inducements to oppose the adoption of the system proposed, believing as I do, that the lawyers would derive much more benefit from its adoption, than any other class of the community. I do not feel myself at liberty, however, to act on this, or any other subject in this Convention, in my professional character, but feel it to be my duty to consult the highest interest of the state. Many gentlemen, who, with upright intentions, support the proposed plan under the expectation of obtaining a cheaper and more expeditious administration of justice, will, I fear, find themselves much mistaken. It appears to me that the full extent of the alteration in our judiciary system, which the adoption of the plan will produce, is not duly considered. There is more in it than at first view meets the eye. It proposes to divide the state into districts, and for each district a judge is to be appointed, who is to reside within the district after his appointment. I have no doubt the intention of the framer of the proposition is, to create district courts, possessing original jurisdiction in law and equity. This I understand to be the import of the second section. These judges, therefore, are not to be created merely to hold circuits for the trial of issues joined in the supreme court, and to preside in courts of oyer and terminer. These powers it is true, the legislature may confer upon them, as incidental to their other powers ; but I believe the great object of the proposed plan to be the erection of a new species of courts, with general jurisdiction in law and equity within the districts. Although this prominent feature of the plan has not been spoken of

I am persuaded the honourable gentleman who introduced the proposition, will admit, that such is his intention; and that it will be competent for the legislature to give original jurisdiction to these district judges, cannot, I think, be well doubted.

Assuming this to be the fair construction of the proposition, I proceed to point out my objections to it. And first, it is a bold innovation upon our system. Nothing like it has hitherto existed in the state. I am aware that other states have tried it, but what has been the result of the experiment? A number of years ago circuit courts of common pleas were established in Massachusetts; they had all the usual character of district courts. The state was divided into several districts, and three judges appointed in each, to hold circuit courts of common pleas in each county in their districts. Appeals lay from those courts to the supreme court. Judges of respectable character were appointed, and the organization was continued for many years. I am not sufficiently acquainted with the history of those courts to enumerate the defects which were discovered in the system, but the result has been, that those courts have lately been abolished, and a new court of general jurisdiction over the state substituted in their place. In Pennsylvania, a president of the court of common pleas presides in the several county courts of the district for which he is appointed. The judges of the supreme court, however, are not confined to the decision of questions of law, as is proposed by the plan under consideration, but hold circuits for the trial of causes in the different counties. In Maryland the system of districts or circuit courts is adopted under a different modification. The state is divided into six districts; a chief judge and two associate judges in each district, compose the circuit court for the respective districts. These courts possess original jurisdiction, subject to an appeal to the court of appeals, which consists of the chief judges of the circuit courts. In this respect it appears to me the Maryland system is better than the plan under consideration. The chief judges composing the court of appeals, are probably judges of higher grade than those who are confined to local courts; and they certainly must acquire greater experience by sitting as a court of appeals, than could be gained by mere district judges. But even with this advantage in the peculiar organization of their courts, I may be allowed to doubt whether the Maryland system has been found to be as good as our own. I have understood from professional gentlemen residing in that state, that the law's delay is much complained of. The trials in the district courts scarcely ever terminate the cause. It is almost a matter of course to take up the causes to the court of appeals, generally by bills of exception, and very often after a year's delay, the suit is remanded for a new trial.

The system of district courts possessing law and equity powers, has been adopted in several of the western states, but so recently as not to sanction our adoption of it on the ground of successful experiment.

But whence the necessity of our adopting a new system of judicature? What are the defects complained of in our system? Besides our court of chancery, we have a supreme court, whose decisions have usually commanded the confidence of the citizens and the respect of our neighbours. Our circuit courts are well calculated for the trial of questions of fact; and the county courts are susceptible of much improvement, and may be made adequate to the administration of justice in local causes of limited amount. Is it not safer to renovate and improve our old system, than to hazard the introduction of a new and untried one? The time has been, when much of the litigation of the state was carried on in the county courts. Unfortunately, however, the fluctuations of party produced such frequent changes of the judges as to bring those courts into disrepute. It became so much a matter of course to displace the judges upon each change of party, that a seat on the bench was not desired by those who were best qualified to fill it. Hereafter, it is to be hoped, this evil will be remedied; a more stable tenure is to be secured to the county judges, and if care is used by the appointing power in making selections for the bench, these courts may be restored to their former consequence.

With respect to the supreme court, I believe no complaints were made until within a few years. Since my acquaintance with the proceedings of that court,

it was able to clear the calendar at its terms, and the causes which were ready for trial were almost always disposed of at the circuit.

For several years past, it is true, the five judges have not been always able to despatch the business of the bench, and of the circuits. This, I apprehend, has not been owing to the great increase of business so much as to other causes. Counties have been multiplied, and many more circuits are requisite to be held than formerly. The connexion of the judges of the supreme court with the legislature, as members of the council of revision, has occupied a large portion of their time. They are about to be released from this duty, and will therefore be able to devote two or three months more to their judicial duties. I think it not improbable that this alteration in our constitution would of itself remedy the evil complained of. But certainly the addition of a single judge, as proposed by the honourable member from Westchester (Mr. Munro) or the appointment of a circuit judge, as proposed by the chief justice, would amply provide for all the exigencies of the case, without disturbing the order of our system.

And in regard to *expense*, such a provision would be much preferable to the adoption of the plan under consideration. That plan contemplates the appointment of eight district judges, and it must be presumed, that the advocates of it will desire to place men of some distinction in their courts. To secure the acceptance of the office by such men, competent salaries must be provided. The salaries of these eight judges, with those of the three judges of the supreme court, will necessarily increase the expense much beyond that of the existing system. And is it not to be apprehended, that whilst the proposed plan will be much more expensive than the old system, it will not be as acceptable to the people? It appears to me that gentlemen aim at impossibilities. They wish to bring justice nearer home, to make it cheaper, and to have courts which shall have a more homely appearance, and yet possess equal intelligence, and command equal confidence. Why have the county courts been deserted by suitors? Certainly because the judges were not men of as much capacity and independence as the judges of the supreme court. Because he who was judge to-day might be displaced to-morrow.

These local courts have, therefore, gradually lost their consequence, and all business of importance is done in the supreme court. The attempt is now to be made to call suitors back; not indeed to the county courts, but to new local tribunals. But will these courts probably be as respectable, and acquire the confidence of the community, as much as the supreme court? The very circumstance of their being local courts, limited in jurisdiction, as it regards territory, will at once give them the character of inferior subordinate courts.

Perhaps, in some instances, men of competent talents will be induced to accept the office of district judge; but it is to be feared this will not always, perhaps not generally, be the case.

Is the residence of the judge within the district of any advantage? Too often the feelings of neighbourhood and intimacy will be apt to influence him; nor will his residence in one part of the district, tend much to promote the convenience of the inhabitants of the whole district; nor are the avocations of the district judges calculated to improve their capacity for administering justice in a very high degree. It will be a principal part of their duty to try questions of fact. These must necessarily be conducted with despatch. The crowd of suitors, witnesses, and jurors, pressing on the court, leaves no time for deliberate discussions of questions of law. Such questions must be hastily decided, and the remedy against a wrong decision must be sought in the supreme court. The judge, whose principal employment is that of presiding at trials by jury, may acquire habits of despatch, considerable acuteness in analysing testimony, and an acquaintance with the rules of evidence; beyond this not much can be expected. He can make but small advances in legal learning, and his decisions on intricate questions of law, must be crude and unsatisfactory. And is it not to be feared, on the other hand, that the change proposed by the plan under discussion, will equally affect the character and reputation of the supreme court? The judges of that court will be confined to the bench to hear appeals and decide questions of law; lawyers alone will frequent the court. The habits

of promptness acquired by holding circuit courts will be lost; and although they may acquire a more profound knowledge of the principles and cases, they will probably have less acuteness, and certainly less mental activity. The experience of ages has demonstrated that the most accurate and accomplished judges have been formed under that system which combines the trial by jury at the circuit, with the decision of questions of law in bench by the same judges. This system, pruned of some excrescences, was brought by our ancestors from the land of their forefathers. There it had been reared and perfected by able and upright judges. It grew up with the exigencies of the people of England. And let us not reject it because it is of British origin. With as much reason might we change our language. If any thing is to be admired in the institutions of England, it is its jurisprudence. That bulwark of freedom, the jury trial, is derived from England.

If we adopt the proposed plan, we shut up our supreme court from public view. Lawyers alone will see it. The names of the judges will scarcely be heard of beyond the hall in which it holds its terms; and it is to be feared that public confidence will desert it. The district judges, whose decisions come under its review, will not be very much disposed to reverence it. Having no connexion with the supreme court—perhaps no personal acquaintance with the judges—a frequent reversal of the decisions of the district courts by the supreme court, will be much more likely to produce hostility than respect. It is among the manifest advantages of the system which we have enjoyed, that the judge who has tried the cause at the circuit, sits with his brethren on the review of his own decision. Habits of candour and liberal scrutiny of the decisions of each other, are by this means produced, and if mistakes have been made in the statement of the proceedings which took place at the trial, the judge who held the circuit is present to correct them. And although it is not proper that judges who have deliberately settled questions of law, should sit on the review of their own decisions in a court of last resort, we are authorized by our own experience, and by the history of the English courts, to assert that the decisions made by a judge, in the progress of a trial at the circuit, do not disqualify him from sitting with his brethren on the re-examination of the questions on deliberate argument at the term.

I am strongly opposed to changing our system of administering justice, by the consideration of the high comparative reputation which our courts have long enjoyed in this country. Many gentlemen in this Convention know, that the decisions of our courts have long been held in the highest respect in the other states. I believe I hazard nothing in saying that the character of our courts has been as high as that of any state in the union. And may I not add, that the people of this state, during almost the whole time which has elapsed since the adoption of our constitution, have had as much confidence in the decisions of their highest courts, and have been as well satisfied with the administration of justice, as the people of any other state? If the excellence of our system is acknowledged abroad, and if it has generally inspired confidence at home, why are we called on to change it for another, which has not, in any state where it has been adopted, proved to be better than our own? And in some respects, our system evidently possesses a decided superiority over the one proposed to be substituted. The excellence of our plan of administering justice, arises, in the first place, from the separation of our courts of law and equity. In a former discussion, the excellence of this part of our plan was made so manifest, that the Convention, by a most decisive vote, rejected the project of uniting the two branches of jurisprudence in the same court.

Nor does the plan under consideration propose to destroy this feature in our system in the highest courts. The next trait of excellence in our system, is the one to which I have already adverted—that of employing the same judges to try issues of fact at the circuit, and to decide questions of law on the bench. It is by this means that the unity of our system and a uniformity of proceedings in all parts of the state, is preserved.

Every part of the state, by means of the rotation in holding circuits among the judges, enjoys, in turn, the talents of every member of the court; and the united decisions of the same judges in term, ensures to every part of the state

uniform rules of law and of legal proceedings, whilst the certain effect of discharging their various duties, is to increase the experience and improve the capacity of the judges. These advantages, I apprehend, will in a great measure be lost, if the proposed plan should be adopted ; and I much fear that our tribunals of justice would sink in character and usefulness. By confining the jurisdiction of a judge within narrow limits, the idea of inferiority is produced, although it may not exist in fact. District judges, it is to be feared, will often be men of less capacity than many members of the bar—I presume this will be so, because I do not believe the legislature will be disposed to give to such a number of judges a salary sufficient to induce men of the first standing at the bar to accept the office ; and whenever the counsel are greatly superior to the court, the confidence of suitors, and of the citizens in general, in the courts, will be impaired. The suspicion of weakness in a court, has almost as bad an effect as a suspicion of its integrity.

Skilful lawyers will acquire an undue influence with the court; and the people, jealous of their rights, will become dissatisfied. My anticipations may not be realized, but I have deemed it to be my duty to comply with the call of my friend from Washington, (Mr. Wheeler,) in stating my objections to the proposed plan.

Mr. N. Sanford was in favour of leaving to the legislature the establishment of such courts of law and equity, as the exigencies of the state might from time to time require. He was opposed to any definite and limited provision in the constitution, with regard to the judiciary, since there might be great and important changes in the state, which we could not now foresee, and which might render any system we might adopt, inconvenient. He was therefore in favour of adopting some general clause, and leave the rest to the legislature. He declared his opinion to be against abolishing the supreme court and the court of chancery.

Mr. Munro approved of most of the remarks of the gentleman from New-York, (Mr. Sanford.) He agreed with him in the opinion, that it would be inexpedient to abolish the court of chancery or the supreme court. But in other points he must dissent from that honourable gentleman. In his view it was important to establish, so far as is practicable, the judiciary system on the firm basis of constitutional provision. He again discussed the proposition of the select committee, for a division of the courts, which now exist, and for the appointment of additional judges, from time to time, as the exigencies of the state might require. Mr. M. concluded with offering the following amendment to the first section of Mr. Carpenter's substitute.

"The supreme court may be divided by law, into so many classes or divisions as the due and convenient administration of justice throughout this state shall from time to time require, and each of those classes or divisions shall hold terms in each year, at such times and places as may be by law directed."

After some discussion whether the amendment was in order, it was finally decided by the chair, that it was in order, when

Col. Young remarked, that the plan proposed by the gentleman from Tioga, (Mr. Carpenter,) was nearly the same as had been suggested by the honourable chief justice, and which it appeared had been the result of much reflection by himself, and his associates on the bench of the supreme court. The only material difference in the two, was, that the latter would provide for the continuance of the present number of judges upon the bench, in addition to a number of circuit judges, whilst the former would reduce their number to three. Have we not been told by the honourable chancellor, that a small number is better adapted to the discharge of this duty than a large one—that the equity business of this state can be better determined by one, than a number of individuals ? If one man can determine upon all the important questions in equity, cannot three do the business at common law ?

It has been suggested by the honourable chief justice, that this proposition, if adopted, would effect the removal of the present incumbents : this is not the case, it would subject them to a re-appointment, and they would certainly have

a fair prospect, as there will be a number of circuit judges to be appointed, which will open a field for men of talent and experience.

Mr. Y. was a little surprised at the discovery made by the gentleman from Rensselaer, (Mr. Buel,) that this would give original jurisdiction in these circuit courts. It was certainly an idea that had escaped the apprehension of the chief justice and chancellor, and all the other lawyers in the Convention. This was not the intent or meaning of the proposition, and that it even gives the power to the legislature, of hereafter vesting them with original jurisdiction, he likewise denied.—The language of the proposition is, "and who shall possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court, and preside in courts of oyer and terminer and general gaol delivery." Now can these circuit judges create themselves, or can the legislature create them into courts of original jurisdiction? If they can, then there must be provisions made for a clerk and clerk's office in each district; but the contrary is the fact, it prohibits the legislature from even vesting them with original jurisdiction.

It has been said that these supreme judges are to be shut up, and confined to hearing arguments and deciding upon dry law points, which will be unpleasant and lead to bad results. There is nothing in this provision which will prohibit them from riding circuits as much as is convenient or profitable; and from the present anxiety to secure the most economical plan, we may very rationally conclude, that the legislature will be pleased with their doing a pretty good share of that duty. The proposition of the gentleman from Albany, (Chief Justice Spencer) permits the legislature to give the same tenure of office as the supreme judges have; and to extend to them other powers, in addition to that of being *ex officio* members of the court for the trial of impeachments and correction of errors.

Mr. Y. was not disposed to disturb the present organization of the court of errors; he did not believe it would be improved by adding a number more of judges, and indeed, he believed there had not been much complaint of the decisions in that court, and they had been as much respected in other states as the decisions of any other court of errors. The gentleman from Westchester, (Mr. Munro) had conceived that there would be a great incongruity in the idea, that the same man can administer law and equity; but the chancellor of the state, who has had many years experience in both branches of our judiciary, does not imagine that there is any incongruity in it. It was a little singular that this gentleman should entertain such an opinion, when he stands at the head of the profession in both departments, and would do honour to the bench in either. If he can practise with skill in both courts, why not discharge the duties of the bench in both? Would this gentleman, if called on by a client to answer a question in equity, answer him that he practised in common law, and could not decide an equity question? Is it not a fact, that those gentlemen who are the most eminent in the one, are also eminent in the other? How did it happen, that our present chancellor, who had been on the bench of the supreme court about ten years, was able to make such decisions in chancery, that not one of his decisions was reversed for more than four years after his appointment to that office? If there is so great an incompatibility in this plan, how has it happened that the present chancellor was able to make such correct decisions at first? The fact is, that there is no incompatibility in it.

These district judges ought to be clothed with equity powers, in order that equity as well as law may be sent to the people, without the delay and expense of coming to the city of Albany for it. At present, nearly half the inhabitants in the state are west of Utica; and is there any propriety in their having to come to the seat of government for equity? A central court of law and equity may be beneficial to central lawyers; but they are not very convenient or profitable to the profession, or people, in the remote parts of the state. Instead of bringing all the emoluments and paraphernalia of the courts to the capital, they might be distributed in the country to procure a share of the law and equity which have been heretofore so snugly husbanded in the cities of Albany and New-York. Mr. Y. thought there would be no difficulty in the adoption of

the plan proposed by the gentleman from Tioga, and he should therefore give it his support.

Mr. N. Williams considered the system proposed by the gentleman from Tioga, then under consideration, as substantially his own. He had advocated it in the judicial committee, and afterwards in a special committee, and had then submitted it to the Convention. Of course he would now adopt it with some modifications. It had all the advantages of the present system, and would afford, if adopted, those necessary aids, to enable the supreme court to perform all its duties. The fact, he said, seemed to be admitted, and could not be denied, that from the great accumulation of business in the supreme court, and the labour of the circuits in fifty-two counties, it was impossible for the judges of that court to accomplish the business which devolved upon them. The only question was, what should be the relief?

He then entered into a minute examination of the various objections which had been urged against this plan of the circuit judges, particularly by the honourable gentleman from Rensselaer, (Mr. Buel.) That gentleman seemed to suppose that it would cause the supreme court judges to degenerate in point of talents. How this could be brought about, Mr. W. said he could not see. The judges would have more time to deliberate and make up their judgments; and they would have the same learned bar to aid them in their investigations; and much of their ability, at home and abroad, it ought to be acknowledged, was to be attributed to the labours of the profession. But according to the same honourable gentleman, these judges of the circuits will never be men of sufficient capacity to render them respectable. Why they should not was inconceivable. They will have the same learned lawyers, and the same books, to give them aid; and it is presumable they will have equal industry with the judges of the supreme court. It is true, they will not hear arguments at bar; but they will read the decisions of the supreme court, and will have to decide upon most of the questions that are carried into that court for argument. He could not but dissent from the opinion offered by the same gentleman, that there was an advantage in having judges of the same bench adjudicate upon the circuit decisions of their brethren, believing, as he did, that judges were sometimes tenacious of their opinions, and that those opinions had better be reviewed by a tribunal pure from partiality or prejudice. He stated, that in England the circuit system had been in operation for ages; but it was defective in taking the judges of the circuits, called commissioners, from the bar, and for a single circuit only. There is no lawyer of considerable practice, who, in holding courts occasionally, will not be called on to decide questions in which he is interested; whereas, by the present plan we shall have judges who will have no other business to interest them or divert their attention.

Mr. W. thought the plan of the honourable gentleman from Westchester objectionable on many grounds. He had from the beginning, been opposed to the division of the supreme court. It would divide the bar, which is now highly respectable, and render it less so. On this plan, there would be hereafter a city bar, and a country bar, and they would, probably, never come together to interchange sentiments and arguments. Besides this division of the judges, for the purpose of holding courts separately, would introduce confusion in business, and destroy the unity and beauty of the judiciary system.

After urging more at large his reasons for preferring the circuit system to any other, he proceeded to observe that there were some defects in the propositions on the table, that he wished to see amended. He thought these circuit judges ought to have a seat in the court of errors, and that civil causes brought from justices' courts by certiorari ought to be heard, and decided finally, by them. This latter provision would give to the country lawyers a very great advantage. They would have an opportunity of arguing questions of law in their own counties, and before a court that would have leisure to hear an argument even upon a certiorari.

But the most serious objection to these propositions was, that by the first section the judges of the supreme court were to be reduced immediately to the number of three. In the first place, he would prefer four to three. There ought never to be less than three on the bench, and one might be occasionally

sick, or necessarily absent. All the higher courts in England consisted of four judges, and no inconvenience had ever been felt. This point, however, was of no great consequence—but he could not see the necessity of adopting a plan that would at once sweep from the bench two of the judges of the court. This question had, however, been fully discussed, and he would not detain the Convention by dwelling upon it. He would ask gentlemen seriously to consider whether it would not be more just, and equally consistent with the public good, to suffer these officers to be gradually abolished? This was his desire, and he hoped sincerely that such an amendment might be adopted. He expressed a wish to be clearly understood on this subject, and thought he would not be suspected of acting from fear or partiality.

Mr. Briggs. Mr. President, on a former day it was sarcastically observed, that the subject of the judiciary was one which came peculiarly within the province of what has been termed the lay members of the Convention; and should the lay members be permitted to imitate the example furnished them by the gentlemen of the bar belonging to this body, it will follow as matter of course, that every lay member will deliver at least one speech upon the subject before us. Such being taken, and considered to be our duty on this occasion, perhaps I may as well offer my sentiments now as at any other stage of the debate.

Sir, it has been admitted on all sides of this house, and it is felt by every man in this community, that some modification in your judiciary system is indispensable. The gentleman from New-York (Mr. Sanford) is in favour of placing the entire subject within the unlimited control of the legislature. That gentleman feels an embarrassment in attempting at this time to meddle with this subject—I think I can perceive, sir, that the gentleman's embarrassment arises from a want of nerve to meet the question, on account of its affecting the private interest of some individuals. I would ask that gentleman, whether the legislature would not have the same embarrassments to encounter whenever they should take up the subject. Besides, I very much doubt that the Convention will consent to give the legislature this unlimited control over your judiciary system, to mould it from time to time into any shape which they may judge expedient. Such power in the legislature would in a very considerable degree destroy the independency of your judges.

Sir, it is my decided opinion, that it is our duty to fix permanently in the constitution the great outlines of the system; and I do hope that we shall have resolution to meet the subject manfully, and to adopt such reformation in the system as the public interest dictates, without regard to the sensibilities of individuals.

Gentlemen inform us, that we ought not to descend into detail upon this subject. I admit, sir, that we should not insert the subject in detail into the constitution. But no person can vote understandingly, for inserting any provision into your constitution upon this subject, or perhaps upon any other, without, in his imagination at least, tracing out in all its ramifications its application and its effects upon the community.

Sir, it has been said, that by adopting the first section contained in this scheme we shall throw out of their offices the judges of the supreme court, and subject those gentlemen to the hazard of being overlooked by the appointing power in filling the new bench; and this consequence is considered by some gentlemen as an insuperable objection to the whole project upon your table.

Sir, from the very dawn of manhood, and ever since I first understood any thing of the nature of human rights, or of the genius of our republican institutions, I have been taught to believe that no person in the community could claim as of right any office in your government; but that individuals were invested with power, not from any regard to their benefit, but solely and exclusively for the convenience of the public. The people have the right to take private property for public use, and they have the right also to require individuals to devote their time and their talents to the public service, but justice demands that a fair compensation should be made in return for such services. And when by dint of superior skill and exertion, individuals perform great and glorious achievements for the public good, they are entitled to the gratitude of their country—to honour and to fame as patriots, and as the friends of man-

kind. But the supposition that any man can claim to hold, as of right, any office in your government, savours strongly of monarchical principles, of aristocratic claims. Crowns have been conferred upon the son from gratitude for the good deeds of the father, and families have claimed hereditary rule as a right founded merely upon the fact of their ancestors having long enjoyed that privilege. Shall we at this time of day, through a pusillanimous fear of violating such aristocratic doctrines, retain a judiciary system, which in its practical application to the exigencies of the state presents but a mockery of justice.

Sir, let us come up from this degradation, and untrammel our minds from such political bigotry. Let us elevate our resolution to a tone suited to the importance of the occasion, and with a firm hand transform this system into a shape suited to the public convenience.

The remedy proposed by the honourable gentleman from Westchester (Mr. Munro) is, by adding a judge to the supreme court to increase the number to six, and to divide them into two bodies with equal powers. Two objections lie against this project. One is, that these separate and independent benches, with equal powers, will frequently clash in settling the law. The other objection is, that the number of judges proposed, and under that organization, will be incompetent to perform all the business of your courts.

Sir, the great complaints against the present system are, that your circuits are not held often enough, and when they are held, the session continues too long—that the business is hurried through them so rapidly, that the juries are bewildered and confounded—that they have not sufficient time, in the course of the trial, to reflect and to obtain a full understanding of the nature of the controversy, and of course receive their direction entirely from the judge.

The counsellor has to travel too far to attend the terms of the supreme court, and when he arrives at the place of destination, and has been in attendance for two or three weeks upon expense, he is informed by the court that he cannot be heard; or perhaps, and what is more common, he hands over his papers, and confides the management of the cause to some one of his brethren of the bar, a man whom his client never saw, nor intended to entrust with his business.

The legislature, for some years past, have been endeavouring to relieve the public from the difficulties arising from this state of things. The mode adopted has been to reduce the fees and costs attending suits. And in my judgment they have pushed this experiment quite too far. Lawyers must live by their profession as well as others—they cannot afford to travel hundreds of miles, and to attend court week after week without pay. Sir, it is a fact which exists at this moment, that you cannot engage a lawyer to manage a cause, however just, unless you pay him a fee out of your own pocket, and which fee, in many instances, amounts to a larger sum than that which you expect to recover.

Sir, in my humble judgment, the only remedy to which you can resort for relief in this miserable and disgraceful state of things, is so to multiply your judges, and so to organize your courts, as to carry justice home to the door of every man in the community, and so to increase the number of your circuits and your terms, as to dispatch all controversies without delay.

Sir, let us fix the number of the districts at eight. I would adopt the senate districts as court districts, appoint a judge in each with the same salary and the same tenure as the judges of the supreme court, and let them try all causes, both civil and criminal, brought in the supreme court. These judges will have ample time to hold three or four circuits annually in every county in the state. The supreme court may hold three or four terms annually, in each district. Every cause should be retained and finished in the district where it originated. Should it be thought advisable, the district judge may be constituted a member of the bench of the supreme court, when sitting in his district, by which arrangement a material object, with some gentlemen, will be obtained, in giving four members to that court.

The gentleman from Oneida (Mr. N. Williams) is of opinion, that certioraris from justices' courts should be heard at the circuits or common pleas. Not so, sir. The poor man, who deals in small matters, has as good a claim to have his rights finally decided upon by an intelligent tribunal as the rich. Small

sums are as important to the poor as large sums are to the rich. Besides, sir, the mode which the gentleman proposes would give us two systems of law—the opinions of the inferior courts might differ from those of the supreme court. It is always important that the law should be certain and well understood. Let your supreme court hold frequent sittings in all of your eight districts, and the decisions of all your inferior tribunals may be brought directly before it.

Sir, by such an organization of your judiciary, the business of your courts will be done well, because your judges will be independent and enlightened. It will be done in season, because your judges will have time to perform it—and it will be done cheap and without inconvenience, because your judges will hold their courts at the door of every citizen.

Sir, I would do more. I would abolish the court of chancery, and constitute each district judge a chancellor in his own district, with full powers to try all suits in equity, subject to the revisal of the supreme court. The benches of your district courts will command the first talents in the country. Gentlemen should reflect, that each of your districts will be larger than some states in this Union—the business will be immense—and the judge being continually employed, will be expert in the discharge of his duties.

Sir, I am confident that some such system as this will relieve us from all difficulties upon this subject, and redeem the reputation of this great and powerful state from the tarnish which attaches to its justice. I hope that the proposition of the gentleman from Tioga (Mr. Carpenter) will prevail. and that the amendment offered by the gentleman from Westchester (Mr. Munro) will be rejected.

Mr. Munro would bow with deference to the opinion of the honourable member from Saratoga, (Col. Young) in all matters relating to canals, or our military system. But with regard to the judiciary, it was a subject that fell immediately within his (Mr. M's.) profession, and on which he should claim to have some knowledge, derived from experience.

The plan that he submitted, was neither novel in its nature, nor original in its projection. It had been practised upon in Great Britain and France. The court of session in Scotland was divided in a manner not unlike in principle to that which he had had the honour to propose. In France, the code instituted by Napoleon, constituted a *court of cassation*, and divided it into eight or ten chambers. His was, therefore, a humble imitation of an established practice, rather than the bold projection of an untried theory.

Mr. M. contended, that it was not fair to ridicule his plan, by comparing the judiciary divisions to military platoons. He begged gentlemen to remember that ridicule was not the test of truth. But if the gentleman from Saratoga insisted upon metaphors, he should rather compare the plan he (Mr. Y.) had advocated, to one which had been long since exploded—the gun-boat system.

Objections had been raised, and comparisons made, between the plan proposed by the gentleman from Tioga, and that of the honourable the Chief Justice. He regretted that such an opinion and plan had been proposed by the Chief Justice. It must have arisen from the politics of the supreme court. The judges of that court had been occupied so much in politics, that they had been compelled to press upon the public a system, that had nothing else to recommend it, than such a relief to themselves from the burthen of official duties as would leave them to the free exercise of their electioneering qualifications. But for this, the Chief Justice might have shone a Holt, or a Mansfield.

The elevated character of the Chancellor had been often asserted and alluded to. He meant no disrespect to that honourable gentleman. He respected him as highly as any man, when he confined himself to the discharge of the official duties of his office ; but when he stepped beyond that line ; when he became a politician, instead of being his fancied oak, which, planted deeply in our soil, extended its branches from Maine to Mexico ; he rather resembled the Bohon Upas of Java, that destroyed whatever sought for shelter or protection in its shade. He looked with horror on the proposition to surrender the chancery system. He begged pardon for his warmth ; on such a subject he could not restrain his feelings.

Gen. Root observed, that the proposition before the Convention consisted of

two parts. 1st. That which limits the number of the judges of the supreme court; and 2dly, the establishment of district courts. He (Mr. R.) could wish that the question could first be taken on the latter; but as that was not in order, and as they were so much connected with each other, he should advert to them both.

The supreme court, as now constituted, appeared to be the object not only of the special care, but of the adoration of the members of the Convention. It was the fashion, when speaking of our courts, to laud the Chancellor and judges, and to set them forth as the most perfect patterns of piety and legal learning in the world. How often had we been told that Johnson's Reports were quoted not only from Maine to New-Orleans, but that the decisions they contained were regarded with reverence in the legal sanctuary of Westminster Hall? The Chancellor, too, had been described as a branching oak, whose roots penetrated the union, whilst its branches afforded shelter to all those who were fortunate enough to obtain access to its shade. Strange, however, as it might seem, it had been even made a question in this body, whether that oak should be preserved. It was, indeed, finally determined that it should not be rooted up; although it was admitted by the honourable gentleman from West-chester, (Mr. Munro) that it often cast a baleful political pestilence around it, and that, like the Bohon Upas of Java, it carried death and desolation to the extent of its atmosphere. If it was really so pestiferous, he (Mr. R.) could see no reason why that gentleman, or others, should refuse to nurture a few *sapling oaks* near the margin of its shade, that might soften and diffuse, and thereby render less baleful, this political pestilence.

But the judges of the supreme court, it was said, must not be disturbed. They hold their offices as a matter of *right*, and that, too, in despite of the people, for whose benefit they were elevated. This was a doctrine that he could never admit. But it had been urged that the judges had abandoned lucrative professions on the faith of the state, that they should hold until sixty years of age. He would reply, that there were few professions so lucrative, that the persons engaged in them can obtain a greater average compensation than $4,500 per year, which the judges had for many years received. If there were, the people ought to know it, and be on their guard against paying such extravagant fees. Four thousand five hundred dolllars a year, was as much as many of our farmers, who are esteemed affluent, are enabled to accumulate by the hard earned industry of a whole laborious life. Again, we were told that by thus rendering the tenure of the office insecure, we should not find candidates willing to accept it. But when, he would ask, was the time ever known, in which a vacancy had happened, or was ever foreseen, when activity was not awake and at work to fill it. The rooms of members who were supposed to be influential, were always thronged with applicants. And whence did this proceed?—Were these applicants inspired with the *mens sibi conscia recti*; or were they actuated by the snug profits of four thousand five hundred dollars a year?

Feudal vassalage, said Mr. R. has been done away in our country—but there was another kind of vassalage from which we had not yet escaped. And he could not omit to notice the phraseology of the honourable gentleman from Oneida, (Mr. N. Williams) who hoped that the system would be *abolished gradually*. He seemed to have in his mind the *gradual abolition* of *slavery*;—and, indeed, that association of ideas was very natural. But as we had already determined upon the one, he hoped we should not shrink from the other. For his part, he longed to see the emancipation of the state from judicial thraldom.

Under this kind of slavery, has this state groaned ever since I have been a member of it; and whenever a member of the bar has undertaken to lift his voice, he has had cause to rue the day that he undertook it. The gentlemen of the bar in the country have seen and felt the evils of this system; and, as you have been already told, it is important that your high judicial officers be above suspicion; otherwise they are worse than useless. If they are suspected, they cannot render to the people justice and equity to their satisfaction. Then bring them before the proper appointing power, and see whether they are free from suspicion, and whether the people are willing to reappoint them. See whether they can look upon the multitude with the same averted eye as heretofore. See

whether they respond with an artificial importance to the Roman poet—*odi profanum vulgus*—and add with a frown, *et arceo.*

I am willing, sir, that this profane vulgar should be permitted to gaze on them through the medium of the constituted authorities; and let them see whether they will bear this popular gaze, with as much fortitude as they have heretofore manifested. They may have occasion to hide their heads in shame and confusion; and perhaps they will not be able to find a fig leaf to cover their nakedness in the garden.

Let us put them to the test: three judges are enough. But we are told by the gentleman from Oneida, that it will not do to reduce the number to three, because there must always be three on the bench. Yet we have been told by the chancellor, that in a court of equity *one* is enough. Why is it that law and equity are so much at variance, that they cannot be administered by the same number of individuals? [Mr. N. Williams explained.] The reason for having them upon the bench at all times, is probably for the purpose of inspiring the people with more awe; but sometimes another way is preferred to inspire awe and terror, than by aggregate numbers. A ponderous wig, a black gown and band are placed upon the judge, thereby making him appear artificially wise.

Now, if we could do with a less number of judges, by placing on their heads these wise wigs, it would be a great relief to our treasury, and perhaps law and equity would be full as well administered as with the present number of judges.

The gentleman from Westchester, (Mr. Munro) who was so frightened yesterday at a single proposition, is desirous of establishing two courts; because, forsooth, old Scotia in her high courts, had divided the jurisdiction of the judges into branches of coequal authority. Mr. R. did not much reverence the example of Scotland; yet he had no special objection to a certain species of ramification, if the branches are not as large, or larger than the main trunk: but we should not like to have them like an old split or crooked oak, sundered from the very ground. This kind of ramification would not be so desirable.

It has been a great question to know, whether the judges of the supreme court belong to the people, to the few, or to themselves; and does this gentleman suppose it necessary to have the wisdom of Solomon to ascertain the truth of this proposition? That we should divide the court in twain, to see who the agonized parent would be, to claim it? I imagine we can get along without this extraordinary wisdom. The gentleman from Westchester (Mr. M.) had likened the system proposed to the gun-boat system; and that honourable gentleman, said Mr. R. would have nothing but seventy-fours upon the ocean of this state, armed with nothing but great guns, and long toms upon the decks, or under the decks. The people have too long feared, and trembled at their sound; but by dividing them, you may call them gun-boats if you please. Such a kind of judicial gun-boats would not strike so great a terror, even if they should happen to be in the neighbourhood of a corn-field: and if these judicial gun-boats will defend the rights of the people, God speed them.

These large ships of war have carried terror and dismay throughout the state: they are calculated to float in deep water, to attack but not defend; and from these deep waters, the rights and privileges of the people have been attacked, by these great ships of war!! Let us then, in heaven's name, prepare ourselves for defence in the shoal waters, and the remote regions of the state—then let us establish an armament for our security.

In the proposition of the gentleman from Albany, it is required, that a man, to be competent to become a circuit judge, must be of the degree of counsellor; as if the criterion of a man's fitness to discharge the duties of that office, could be no way determined, but by the particular quality of a piece of sheepskin. Does this proposition propose to give us any right which we do not now possess? By the old constitution, we are not limited to any particular number of judges; the only limitation is in the minutes of the council of revision, and in the statute books, by which five only can receive pay. The legislature are competent to increase the number of judges, but cannot provide for their payment.

The plan proposed by the gentleman from Tioga, will remedy every evil, and enable the legislature so to organize the system, as to bring justice and equity into every county in the state.

Mr. P. R. Livingston said, if an accurate account had been kept of the time taken up in debate for some weeks past, it would appear that he was entitled to some credit; for in a number of important questions, had his inclination prompted him, his health would have prevented him from mingling in the debate. But on a question, which involved the dearest interests of his country, and the character of the Convention, of which he was a member, he could no longer remain a silent spectator.

In a well regulated government, the first object is, to secure wise, wholesome and good laws. The next thing, is, to provide for an able and faithful interpretation of them; and, what is of infinitely more importance, impartiality in dispensing of them. Again, it is important, that these laws should be faithfully executed.

The first section of the amendment under consideration, proposes, to have a supreme court to consist of three judges: a motion is made to strike out this section.

It will be recollected, that a committee was appointed, to take up this judicial department; that they spent time and labour in proportion to the importance of the subject before them; and reported the result of their deliberations; but that report is no more to be found; not a trace of it remains.

Another committee was appointed, who likewise reported; and their report received the decided disapprobation of this Convention. The report now before the Convention, is one of the committee of the whole, upon the proposition submitted by the honourable gentleman from Tioga, (Mr. Carpenter.)

Mr. L. sincerely regretted, that the chief justice and some of his associates were not present; for he always felt indisposed, to assail public character when it had not the means, or opportunity, of protecting itself. He had hoped, these judicial characters would be present; but public avocations had compelled them to retire from the hall.

On the proper establishment of our judiciary, depend the life, liberty, and prosperity of this community. Our high judicial officers are the immediate guardians of our constitution; they are the barriers between legislative encroachment and the citizen's rights. A law avails nothing, if it is in contravention of the charter of the people's rights, if your judiciary are firm, and exercise integrity and wisdom, in putting down that law.

When the council of appointment was under discussion, you found a ghost in every corner; and there was not a man to be found, that would advocate its cause, for a moment. When the council of revision was under review, there were ghosts equally numerous; and no man dared defend or advocate its cause; but when the judiciary is under review, the ghost does not appear, but you find the gladiator in every corner, ready to protect and defend it. Said Mr. L. I admire the judiciary as much any other man, when it is worthy of esteem; and I am as willing to assail it when there is just ground for attack. Sir, this state has been degraded and disgraced by the debates which have been had upon this floor. When the good people of this state, and when your sister states, shall look at the debates which have been had here, a picture will be presented, of corruption, misconduct, and misery.

What has disgraced us? Some gentlemen tell us it has been a shuffling and scuffling for office! Not so, sir! It has proceeded from another source.—Characters have been permitted to remain in your judiciary department, who have been implicated with attempts to procure corrupt laws! It has been that department, which has prevented the passage of wholesome laws which the public good required!

It has been that department which has given sanction to laws unfriendly to the public good! It has been some of that department who have become notorious, in every part of your state, in electioneering campaigns; who have repeatedly attended political meetings, and spoken in them over and over again! I now make an appeal, and an awful appeal it is, to the professional gentlemen of this Convention, whether it has not been the case, that when a man in the country, of any political standing, has had a suit depending at a circuit court, he has not consulted with his counsel, to know what judge was to preside at the circuit; and whether he has not been frequently told, that a political judge

was to preside, and it would not do to let the cause come on! Can there be a more awful picture imagined, than such a state of things presents?

Can a person, after having spent half his life in politics, divest himself of all political prejudices and partialities upon a bench of justice? If he can, he is something more than man.

Why is justice represented as being blind, when she holds the scale? Her emblem is, I will weigh you by the balance: I want not to see you, I wish only to hear; and as the weight of evidence shall be, the scale shall preponderate.

Delicacy is often to be admired in man. In the female character it is ever admired; but that kind of delicacy which shall raise a shield in protection of a man, against public sentiment, and public interest, I pronounce false delicacy. I boldly avow my object for voting for three judges. I wish these men to pass under the review of that power which gave to them a seat upon the bench of the supreme court. Can it be possible that we are to fix upon the good people of this state, a set of men to hold this important station, when we know it is contrary to their wishes merely from a sense of false delicacy?

Mr. L. denied that he had come to the Convention to make a party constitution; but there was never a similar body of men elected in any age or country, who did not possess, more or less, the feelings of party. He was willing to lend his aid in establishing a republican form of government, and to give up all that power which could be surrendered, consistently with the spirit of democratic principles; that the bird of the west may extend her wings from the ocean to the lakes; and protect that constitution, which is to preserve the prosperity and happiness of our country, and of millions yet unborn.

Mr. L. said, that public economy was commendable, and we had already done considerable towards effecting a more economical plan of administering the different departments of our government; but more still remained to be done.

The plan proposed by the gentleman from Tioga, was much the most economical, and from the assertion of the chancellor, it would be supposed, that three judges are as good as five; and he should never question the veracity of that gentleman, when stating facts, but always doubt when he speaks politically. An attempt had been made to relieve the chancellor from some share of his present burthens, in the discharge of the duties of his court, by creating vice-chancellors; but this was soon lost sight of.

The present plan proposes to vest certain chancery powers in the circuit judges; and if the legislature should think proper, they may give a similar power to courts of common pleas. Objections had been raised to this plan by a number of professional gentlemen; but he was satisfied that a person, who was a good common lawyer might be also a good equity lawyer. It is supposed, that if these judges are to be appointed in their respective districts, it will not be possible to get men of sufficient talents; because the talents are always found in our cities. This is a mistake: if you look back for the last twenty years, you will find that our chancellors, attorney generals, and others of the greatest talents, have come from the country. The great mass of the profession are out of the cities; and their circumstances and habits of study are such as lead to greater acquirements than is common in our populous towns. This plan is calculated to simplify the process of the law, and thereby enable the individual of moderate fortune to obtain justice, who heretofore has been compelled to surrender his rights to the man of overgrown capital, because he had not means to work his passage through the perplexing labyrinth of our former judicial system.

If two of the judges are thrown from the bench, there will be a sum of six thousand dollars at hand, which will pay four circuit judges fifteen hundred dollars each, and for that sum they could perform the necessary circuit duties, in law and equity.

Is there any thing unjust in the adoption of this plan? is there any partiality for particular incumbents in office? Have we not done the same with the judges of our courts of common pleas, that we propose now to do with the judges of the supreme court? Will any man say, that by this act, we intend to dismiss from the bench, judge Van Ness, or judge Spencer? No, we do not determine any such

thing; we simply put them on their merits; and as they shall be found, so let them stand or fall.

We are told by the Chief Justice, that he left a lucrative profession, to take a seat upon the bench, and that the salary which he has received has not been equal to what he would have earned by his professional business. He has received for his services on the bench, more than fifty thousand dollars, which is a greater average a year, than any professional man can rationally expect to make; and was he compelled to accept of this office?—If he had been, the case would be very different from what it is now. Judge Spencer came into office under a republican administration; Judge Van Ness was appointed by a mongrel council; and the elevation to the bench of Judge Platt was occasioned by the defection from the republican ranks of a man elected to the senate from the county of Dutchess, who acted the part of a political Judas, and sold his party.

We have been bought and sold—there is not one of these men, who would have been on the bench, if our administration had been truly republican. The fact is, that these men have all volunteered; and there is scarce a lawyer in the state, who would not willingly volunteer in such a cause.

Mr. L. conjured the members of the Convention, not to fasten upon the bench a set of men in whom not an individual of their body had any confidence whatever.

There is not a man in this Convention, who is a republican of any standing, or character, who would like to have his liberty, or property placed in the hands of a political judge of a different party; and he therefore hoped the section would not be stricken out, but remain as it had been reported, by the committee of the whole.

Mr. Jay said, that the gentleman from Delaware, (Mr. Root,) had complained that it was the fashion of the Convention to laud the judges. If this was a crime, it was one with which that gentleman could not be reproached. From the commencement of the session to the present hour, he had scarcely made a speech on any subject, even if it were the militia, which did not contain invectives on the judiciary. It was due, however, to that gentleman, to say, that though his invectives were often indiscriminate, yet when he did condescend to particularize the objects of his displeasure, he had spared the chancellor. It was reserved for his (Mr. Jay's) colleague from Westchester, (Mr. Munro,) to make a personal attack upon that learned gentleman in his absence. He had said that the chancellor was not to be compared to the useful oak, which affords grateful shade and shelter under its protecting branches; but was rather to be compared to the baleful upas, whose leaves drop poison, which corrupts the surrounding atmosphere, and whose pestiferous influence destroys all who approach it. Since he first took his seat, he (Mr. J.) had not expressed any opinion, either favourable or otherwise, of any individual holding a judicial office; but since this unprovoked attack had been made on an absent member, whom he esteemed it an honour to call his friend, he hoped he might be permitted, without offence, to say of him, that his integrity, his genius, his learning, his industry, his sincerity, and his simplicity, would rear for him a monument more durable than brass, which neither the tooth of envy, nor the storms of time, would ever be able to corrode or destroy. The gentleman from Dutchess (Mr. Livingston) had accused the whole judiciary of what he was pleased to term judicial depravity; and he called on the Convention to remove them from office, as a punishment for their crimes.

He (Mr. J.) would submit to the Convention, whether it had even been alleged by the bitterest enemies of the judges, that they had ever condemned any man unheard, and without a tittle of evidence to the offence with which he was charged. And yet the gentleman advised the Convention to act in this matter judicially, and to remove the judges unheard, and for offences which were neither specified nor proved. Was not this the highest judicial depravity? Mark the difference between men: Another honourable gentleman, high in the confidence of the same party to which the gentleman from Dutchess was attached, had declared, that if any man in the state had reason to cherish hostility against the judges, it was himself; but that he should forever despise himself if he should avail himself of his influence in this place, to gratify his personal feel-

ings. That very course of conduct which the gentleman from Otsego, (Mr. Van Buren,) had pronounced despicable, was the one which the gentleman from Dutchess advised the Convention to pursue. Mr. Jay had too much confidence in the honour and good sense of the Convention, to believe that they would alter the constitution of their country, which they all believed would outlast at least the present generation, merely to gratify personal animosities or party antipathies. Leaving, then, this most ungrateful topic, he would examine the plan now proposed for adoption.

Mr. J. then compared Mr. Carpenter's proposition with the present judiciary system, and insisted that the former was in every respect inferior to the latter.

Mr. Munro replied to the observations of his colleague, (Mr. Jay,) and remarked, that when he alluded to the honourable chancellor, he spoke of him as a politician. It was in that point of view, and in that alone, that he had alluded to his influence. No man respected him in private life, or in the discharge of his official duties, more than he did. But as a politician, as a member of this Convention, what had we seen? Had we not heard the honourable chancellor in his place, declare that Christianity was not a law of the land—defend the morality of lotteries, and concede away and surrender the whole chancery system. so essential to the security of the rights of the people of this state?

Mr. M. was not disposed to censure or condemn, and should regret any unadvised expressions that had been occasioned by the ardour of debate; but he could not consent to approve that conduct which was calculated to prostrate our most wholesome and valuable institutions.

The previous question was then called for, and the question on striking out the first section and inserting Mr. Munro's substitute, was taken by ayes and noes, and decided in the negative, 64 to 46, as follows:

NOES—Messrs. Barlow, Birdseye, Bowman, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Cramer, Dubois, Eastwood, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunting, Lansing, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, Pitcher, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, R. Sandford, Schenck, Seely, Sheldon, Starkweather, Steele, Swift, Taylor, Townley, Townsend, Tripp, Tuttle, Van Fleet, A. Webster, E. Webster, Wendover, Wheeler, Woods, Wooster, Young—64.

AYES—Messrs. Bacon, Baker, Breese, Buel, Clyde, Dodge, Duer, Edwards, Fairlie, Fish, Hallock, Hunter, Huntington, Hurd, Jay, Jones, King, Lawrence, Lefferts, Munro, Paulding, Porter, Rhinelander, Rogers, Rose, Sage, Sanders, N. Sanford, Sharpe, I. Smith, R. Smith, Stagg, I. Sutherland, J. R. Van Rensselaer, S. Van Rensselaer, Verbryck, Ward, Wheaton, E. Williams, N. Williams, Woodward, Yates—46.

Mr. Wheaton offered the following amendment to the first section, to be inserted after the word "justices":

"But this limitation of the number of the said justices, shall not take effect until their number shall be reduced to three, by death, resignation, the constitutional limitation of their term, or removals from office; and that until such reduction is made, the said justices shall continue to hold the sittings and circuits in such counties as may be prescribed by law."

Mr. Duer was opposed to the adoption of the amendment of his honourable friend from New-York, and would claim the indulgence of the Convention for a few minutes, while he explained the motives of the vote that he felt himself compelled to give. Such an explanation had been rendered necessary by the course of proceedings on this subject, and he trusted would have the effect of protecting himself and others against a charge of inconsistency, that some would be ready to prefer. On a former occasion, he had voted with the majority of the Convention against the amendment proposed by the honourable gentleman from Richmond, to the report of the second select committee on the subject of the judiciary. The avowed object of that amendment, was the removal from office of the present chançellor and judges of the supreme court.

He must be permitted to say, that in his judgment, such was its sole object, since it contemplated no change whatever in the power or jurisdiction of the respective courts. In voting against that amendment, he had certainly not been influenced by any personal regard for some of the individuals who were to be affected by the measure, and whose conduct had so often been the subject of allusion. This was not the time nor place to express his sense of the merits or demerits of the persons to whom he referred; but, in behalf of himself and other gentlemen of the profession, he repelled with scorn, the imputation of having been governed by any fear of incurring their resentment, or any wish to propitiate their favour. Such insinuations he knew had been industriously circulated, but from whatever quarter they had proceeded, he must be permitted to say, they were utterly groundless. He had opposed that amendment, because he could not assent to the propriety of inserting a provision in the constitution to displace from office any individuals, however obnoxious, and whatever benefit he might privately believe would accrue to the public from their removal. This was no part of the trust which the people had delegated to the Convention. They were not a tribunal to investigate or punish the supposed misconduct of any public officers, but it was their duty to submit to the people such permanent alterations in the frame and system of the government, as experience had shewn to be necessary, and public opinion had demanded. He had, therefore, fully concurred in the opinion so forcibly expressed by his honourable friend from Otsego, (Mr. Van Buren,) that the adoption of that amendment would have been an abuse of the powers of the Convention—would have drawn upon them the just resentment of their constituents, and would have fixed a stain upon their proceedings, and upon the character and honour of the state, that no time would have been sufficient to remove.

Mr. D. had also voted to strike out the first section of the proposition of the gentleman from Tioga, then under consideration. He had so voted, because he was unalterably opposed to the system which it was the object of that proposition to introduce, and the establishment of which he was well persuaded would tend to degrade the character of the judiciary, and materially to injure the general administration of justice. But the majority of the Convention had resolved to retain the clause, and by that vote had evinced their determination to adopt the whole system of which it formed a part. The two sections were inseparably connected, as the gentleman from Delaware had candidly admitted, nor was it possible to believe, that any gentleman had voted for the first, who was not equally prepared to vote for the second. What, Mr. D. asked, was the question now submitted? The supreme court as now constituted, was in effect abolished, and a new court of different functions and jurisdiction, was established in its place. His honourable friend proposed to protect the present judges by a constitutional provision against the otherwise necessary effect of this change of system, and to exempt them from the operation of a rule which the Convention had unhesitatingly applied to all other public functionaries. To this length Mr. D. was not prepared to go. That the present governor, senators, and first judges of the counties, would lose their offices, if the amendments agreed to by the Convention should be adopted by the people, was admitted by all; nor had it occurred to any gentleman to propose an exception in their favour. Mr. D. could not conceive, nor did he believe, that human ingenuity could state a distinction between their case and that of the judges. The right to their respective offices was exactly the same, and they had all doubtless accepted them with the expectation of retaining them until the term for which they were elected or appointed, should have expired.

If there was any injustice, any violation of a compact, a vested right in the one case, there was the same injustice in all; nor did he see how any gentleman could, consistently, vote in favour of the proviso now offered, who was not prepared to extend the same protection to all who would otherwise lose their offices by the change in the *system* of the government. This course, he presumed, no gentleman believed it prudent or necessary to adopt. It was readily perceived that the removal of all these officers was not the object, but the effect, the consequence of the amendments which the Convention deemed it their duty to propose, and which it was the undoubted right of the people to adopt—a right

paramount to the title of any individual to an office under the existing constitution.

Upon what ground of principle can this proviso be defended? will it be said that the merits and past services of all the judges are of such an extraordinary character, that we are bound to apply to them a rule different from that which we apply to others? Does the public good require, that they, and they alone, should be preserved in office, by a constitutional provision? Is it for their personal accommodation, that the operation of a system is to be prevented, or suspended, which the majority of the Convention have decided it was wise to adopt? The question now presented, was in truth exactly the reverse of that upon which the Convention had before been called to act. By inserting a provision in the constitution solely for their removal, we were then required to pass upon them a sentence of peculiar condemnation, By adopting a clause solely for retaining them, we are now required not merely to pronounce their acquittal, but to stamp their conduct with peculiar and marked approbation. Mr. D. did not believe that the Convention had the right to do either, or if they possessed the right, that the exercise of it, for either purpose, was prudent or justifiable.

Mr. Van Vechten said, the gentleman last up, (Mr. Burroughs) has declared himself against the amendment of the gentleman from New-York, (Mr. Wheaton,) and disclaims being influenced by party motives. It is not for me to question the motives of gentlemen from whom I differ in opinion; but it is my duty to express freely the reasons why I dissent from them.

I consider the proposition of the gentleman from Tioga, (Mr. Carpenter,) to be the same in effect, though more plausible in shape, as that made a few days since by the President. It proposes to vacate the seats of the present judges of the supreme court. The reason urged in support of the proposition, is that it contemplates the creation of circuit judges, which will render it expedient to reduce the number of supreme court judges to three. Let me ask why? The amendment proposes that the diminution shall not take place until the seats of two of the present incumbents shall become vacant in the ordinary way, and that in the mean time the whole number shall continue to hold such sittings and circuits as may be prescribed by law. This will save the necessity in the first instance, of appointing two of the contemplated number of circuit judges, and leave the term for which the judges of the supreme court were appointed, unimpaired, without inconvenience or additional expense to the state. Is not this the most expedient course? Will it not exempt the Convention from the imputation of having wantonly removed high judicial officers, whose offices are secured to them by the present constitution, during good behaviour, until they attain the age of sixty years? We have an example of magnanimity in that invaluable instrument, which should admonish us to pause on this subject. The clerkships of Ulster and Dutchess were granted by the crown of Great Britain to two respectable citizens during life. The issue of our revolution determined those grants, but the sages and patriots of that day, voluntarily confirmed them by a constitutional provision. With this example before us, are we prepared not to confirm regular incumbents in their offices, but wantonly to defeat their constitutional term? If we are not, let us agree to the amendment before us.

It has been urged that we have done the same thing with respect to the first judges of the courts of common pleas. This I apprehend is incorrect; we have only reduced the term of those judges by a permanent provision to five years. Had we done so in relation to the judges of the supreme court, there might have been some force in the argument. The permanent reduction and limitation of a term of office seems to me to be somewhat different from directly vacating the offices of the present judges of the supreme court.

But, said Mr. V. V. I do not feel disposed to delay the taking of a question which appears to be eagerly called for. I have done what I conceived duty required of me, to bear my feeble testimony against a measure which I deem derogatory to the character of this Convention, and to the honour of the state.

The question was taken by ayes and noes and decided in the negative, 66 to 39, as follows:

NOES—Messrs. Baker, Barlow, Birdseye, Briggs, Brinkerhoff, Brooks, Bur-

roughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Clyde, Cramer, Duer, Dyckman, Edwards, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunting, Hurd, King, Knowles, Lawrence, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Pike, Pitcher, Price, Radcliff, Reeve, Richards, Rockwell, Root, Rosebrugh Ross, Russell, R. Sandford, Schenck, Seaman, Seely, Sheldon, Starkweather, Steele, I. Sutherland, Swift, Tallmadge, Taylor, Townley, Townsend, Tripp, Van Fleet, A. Webster, E. Webster, Wheeler, Woods, Young—66.

AYES—Messrs. Bacon, Beckwith, Breese, Dodge, Fairlie, Fish, Hunter, Huntington, Jay, Jones, Lansing, Lefferts, Munro, Paulding, Porter, Rhinelander, Rogers, Rose, Sanders, N. Sanford, Sharpe, R. Smith, Stagg, Sylvester, Ten Eyck, Van Buren, Van Horne, J. R. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, E. Williams, N. Williams, Woodward, Wooster, Yates—39.

The first section was then passed without a division.

Mr. Munro moved to amend the 2d section, by striking out "districts," and inserting "circuits:" Lost.

Mr. Birdseye offered the following resolution :

Resolved, That a committee of members be appointed, to apportion the whole number of the members of the assembly among the several counties of the state, as nearly as may be, according to the number of inhabitants in each county, excluding aliens, paupers, and persons of colour not taxed.

Another motion was made to adjourn, which was lost; and it was concluded to finish the report.

Mr. Munro offered the following amendment :

"The chancellor, the justices of the supreme court, and the said circuit judges, shall receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office ; and they shall not, on any pretence, hold any other office, whether created under this constitution or othwise." Lost.

Mr. Radcliff then offered the following amendment to the second section :

"Or the court of chancery ; and that the legislature may provide for the appointment of one or more additional judges of the court of chancery, or otherwise vest the powers thereof exclusively in the supreme court :" Lost.

Mr. Radceiff moved to adjourn : Lost.

The second section passed without amendment ; and the question on the whole proposition of Mr. Carpenter was taken by ayes and noes, and decided in the affirmative 62 to 53, as follows :

AYES—Messrs. Barlow, Birdseye, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Carver, Case, Child, D. Clark, R. Clarke, Cramer, Dubois, Eastwood, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunting, Hurd, Knowles, Lansing, A. Livingston, P. R. Livingston, Moore, Nelson, Park, Pike, Pitcher, Price, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, R. Sandford, Schenck, Seely, Sheldon, Starkweather, Steele, Swift, Taylor, Townley, Townsend, Tripp, Tuttle, Van Fleet, A. Webster, E. Webster, Wheeler, N. Williams, Wooster, Young—62.

NOES—Messrs. Bacon, Baker, Beckwith, Breese, Buel, Clyde, Collins, Dodge, Duer, Dyckman, Edwards, Fairlie, Fish, Hallock, Hunter, Huntington, Jay, Jones, King, Lawrence, Lefferts, M'Call, Millikin, Munro, Paulding, Porter, Rhinelander, Rogers, Rose, Sage, Sanders, N. Sanford, Seaman, Sharpe, I. Smith, R. Smith, Stagg, I. Sutherland, Sylvester, Tallmadge, Ten Eyck, Van Buren, Van Horne, J. R. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, E. Williams, Woods, Woodward, Yates—53.

The Convention then adjourned.

MONDAY, NOVEMBER 5, 1821.

The Convention met at 12 o'clock, pursuant to adjournment, and the minutes of Saturday were read and approved.

Mr. Yates, chairman of the committee to whom was assigned the duty of arranging the amendments, and of recommending the mode of submitting them to the people, made the following report:

" The committee who were appointed to arrange the amendments agreed upon by the Convention, and to report the same, with their opinion as to the expediency of either incorporating them with such parts of the constitution as are not altered by the Convention, or of submitting the same separately to the people—Report,

That they have duly considered the subject referred to them, and thought it inexpedient to incorporate the amendments with such parts of the constitution as remain unaltered.

The committee have therefore arranged the amendments into thirteen distinct articles, which they submit with the report.

In making this arrangement, they recommend such provisions as they conceive will be necessary to carry the amendments into effect, if adopted by the people.

The committee are also of opinion that the amendments be together, and not separately submitted to the people, and they report resolutions for that purpose."

On motion of Mr. Yates, the report was referred to a committee of the whole.

Col. Young offered a resolution, instructing the committee of which Mr. Yates is chairman, to expunge the qualification for the office of senator, requiring a freehold to the value of one thousand dollars, over and above all debts and incumbrances charged thereon, and to restore the qualifications as fixed by the present constitution.

Mr. Sharpe would like to hear some reasons in favour of making such an alteration. If this change were made, it would be the means of giving thousands of votes against the amendments. It was well known to this Convention, that in many of the old counties the people believe we have already gone too far on this subject; and unless very strong reasons could be urged in favour of the alteration, he should vote against it.

Mr. R. Clarke believed he could assign some substantial reasons why the resolution should be adopted. As the amendment now stands, it would authorize an inquest upon the property of a candidate, and thereby be the means of injuring his credit. It would also be difficult, in many cases, to ascertain precisely how much a candidate was worth.

The resolution was further supported by Messrs. Birdseye, Briggs, and Young, when Mr. Van Buren suggested an amendment to the resolution, so as to let the section stand as it now is, and omit the proviso, which required the thousand dollar qualification.

Col. Young assented to this amendment, and the resolution, thus modified, was adopted without a division.

Mr. R. Clarke offered the following resolution, which was ordered to lie on the table:

" *Resolved,* That all the sections and provisions of the existing constitution of this state, which are not modified, altered or abolished by the proceedings of this convention, together with the alterations and amendments approved, or to be approved, by the same, be incorporated and consolidated into an amended constitution."

The Convention then went into committee of the whole, on the report of the committee of which Mr. Yates is chairman.—Mr. Lawrence in the chair.

The report was then read by the secretary.

" In the Convention of the people of the state of New-York, assembled at Albany on the 28th day of August, in the year of our Lord one thousand eight hundred and

twenty-one, pursuant to an act of the legislature of the state, entitled "an act recommending a Convention of the people of this state," passed March 13th, 1821."

Resolved, That the following amendments to the constitution of this state be submitted together, and not in distinct parts, to the decision of the citizens of this state and ; if the said amendments be ratified by the citizens, in the manner hereinafter prescribed, they shall become a part of the constitution of this state.

Resolved, That an election be held in the several towns and wards in this state, on the third Tuesday of January next, and be continued, by adjournment from day to day, for three days successively, including the first ; at which election, the citizens qualified as voters by the act aforesaid may vote by ballot for and against the said amendments. And on such of the said ballots as are for the said amendments, shall be written or printed the word "Yes," and on those which are against the said amendments, the word "No."

That the officers in the several towns in this state, authorized to act as inspectors of the election of senators, and the persons who may be appointed in the several cities in this state for the purpose, shall be the inspectors of the election hereby directed ; and that the said election, shall, in all things, be conducted in like manner, as nearly as may be, as is prescribed in and by the fourth, fifth, and seventh sections of the act entitled "an act regulating election ," passed March 29, 1813 ; and in and by the second section of the act entitled "an act recommending a Convention to the people of this state," passed March 13th, 1821 ; and in and by the act entitled "an act to amend an act entitled an act for regulating elections, passed March 29th, 1813 ;" passed April 11th, 1815. And that the votes given at such election shall be canvassed by the inspectors of the several polls, and returns of the said votes shall be made by the said inspectors to the clerks of the respective towns and counties ; and certificates of such returns shall be recorded by the said clerks, and transcripts of such certificates shall be certified and delivered to the secretary of state, in like manner, as nearly as may be, as is prescribed in and by the 16th section of the act entitled "an act for regulating elections," passed March 29, 1813, in relation to votes given for senators.

That the transcripts last mentioned having been received by the secretary of state from the clerks of the respective counties, shall remain in his office of record ; and the said secretary, the surveyor general, the attorney general, the comptroller, and treasurer of this state, or any three of them, shall on the 15th day of February next assemble at the office of the said secretary, and proceed to calculate and ascertain the whole number of votes given at such election for and against the said amendments, and shall thereupon within six days thereafter determine, conformably to such transcript, the number of votes given for and against the amendments respectively, and whether a majority of the said votes are for or against the said amendments. And they shall without delay make and subscribe with their proper names a certificate of such determination, and file the same in the office of the secretary of state, which shall remain therein of record, and shall without delay cause to be delivered a true copy thereof, so subscribed as aforesaid, to the president of this Convention, to the person administering the government of this state, and to the speaker of the house of assembly ; and shall also cause a copy of such certificate to be published in the news paper printed by the printers to this state. And if it shall appear by the said canvass last mentioned, that the majority of votes given and returned as aforesaid are against the amendments, then the said amendments shall be deemed to be rejected by the citizens of this state ; but if the majority of the said votes are for the said amendments, then the said amendments shall be deemed to be ratified and confirmed by the citizens of this state.

Resolved, That five thousand copies of these resolutions, with the amendments subjoined, be printed, and that the secretary of state cause the same to be transmitted without delay, at the expense of the state, to the county clerks, whose duty it shall be to distribute the same among the different towns.

To the foregoing *resolutions* were appended the *amendments* which had already passed in Convention, varied only in form.

Mr. Briggs moved to amend the first resolution, by providing that the amendment relative to future amendments be submitted separately.

Some remarks were made by Mr. Tompkins, when the motion of Mr. Briggs was put and lost.

On motion of Mr. Van Buren, the consideration of the resolutions of the committee were postponed, and the report of the committee first taken up.

GEN. ROOT moved for the consideration of the resolution of Mr. R. Clarke. The motion prevailed, and the resolution was read.

Messrs. RADCLIFF and RUSSELL supported the resolution, upon the ground that it was important for the people to have a full view of the whole subject before they decided on the amendments.

MR. KING remarked, that the act recommending a Convention, gave this body authority to submit their *amendments* only to the people, and not all the collateral subjects. Other information must be given in an unofficial manner.

MR. R. CLARKE explained his object in offering the resolution. If the amendments were not incorporated with the remaining parts of the old constitution, and presented in connexion, the people would never be able to comprehend the subject; and it would take another Convention of lawyers to interpret the amendments.

The resolution was further supported by Messrs. Young, Sharpe, and Van Buren, when the question was taken by ayes and noes, and decided in the affirmative, 94 to 17, by all the members present, excepting Messrs. Birdseye, Buel, Edwards, Hees, Huntington, Jay, King, Paulding, Rhinelander, R. Smith, Sylvester, Van Horne, J. R. Van Rensselaer, Van Vechten, Wheaton, E. Williams, and Yates, who voted in the negative.

On motion of MR. VAN VECHTEN, the committee rose and reported, without asking leave to sit again.

The report of the committee was accepted, and on motion of Mr. Root, the resolution of Mr. R. Clarke was referred to a select committee.

GEN. ROOT moved that said committee consist of three.

Some discussion took place, whether the resolution should be referred to the committee of which Mr. Yates is chairman, or to a new committee of three, when Mr. Root's motion prevailed, and the President named Messrs. N. Sanford, Buel, and Wheaton, to compose said committee.

Messrs. King, Dodge, and Price, obtained leave of absence for the remainder of the session.

It was moved, and carried, that the report of the committee of three be printed as fast as it is completed.

Adjourned to ten o'clock to-morrow morning.

TUESDAY, NOVEMBER 6, 1821.

The Convention assembled pursuant to adjournment, and the minutes of yesterday were read and approved.

The Convention then resolved itself into a committee of the whole, on the resolutions reported yesterday by the committee of which Mr. Yates is chairman—Mr. Lawrence in the chair.

The first resolution passed after being amended, so as to conform to Mr. Clarke's resolution, providing for the incorporation of the amendments with the provisions of the present constitution, which have not been amended.

The second resolution passed without amendment, except reading the third Tuesday in January, and the fifteenth of February, in blank.

A motion was made to amend the third resolution, by authorizing 5000 copies of the present constitution to be distributed in like manner as the amended constitution, which, after some discussion, was put and lost, and the resolution passed as reported.

On filling the blank in the second resolution, some discussion arose.

MR. SHARPE was in favour of the first Wednesday of January, instead of the last Tuesday. The precedent of Massachusetts warned us against a long interval for discussion. Some of the brightest features in the new constitution of that state were rejected, by giving too much time for the organization of opposition. If the people would not read and examine in four or five weeks, they would not do it at all. It would become an old story, and would be neglected.

MR. BACON said the gentleman from New-York (Mr. Sharpe) appeared to be in favour of striking while the iron was hot. This might be prudent in me-

chanical operations; but in constitution-making, he apprehended it was an unsound maxim. It would be better to wait till the subject had grown cold, when the people would act without excitement. He believed the public had given up the idea of following us through all the mazes we have passed, and had concluded to wait till the result of our labours was submitted. The subject would therefore be new to the citizens, and would require time for examination.

Mr. Van Vechten was in favour of the longest time. It was not possible for the amendments to be properly discussed between now and the first of January. A few might understand them; but a great majority of the people would require a longer time for deliberation.

Mr. R. Clarke replied to the remarks of Mr. Sharpe. No possible injury could arise from giving the full time for deliberation; while on the contrary, if an attempt were made to hurry a decision on the amendments, it might justly be suspected that this Convention were afraid of the light of investigation.

Mr. Edwards agreed with the gentleman from New-York (Mr. Sharpe) that the time proposed for deliberation was unnecessarily long. If the amendments were submitted on the first of January, there would then be forty-six days for examination, after allowing time for the circulation of our proceedings to the remotest counties in the state. He was in favour of the 26th of December, the day after Christmas. The people would then be more at leisure, than at any other time.

Mr. Fairlie was opposed to making this a holy-day business. It was a question of too much moment to be decided at such a season; and the period for consideration was too short. He was in favour of the third Tuesday of January.

Messrs. Russell and Young made a few observations in favour of the longest term, when the question on filling the blank with the third Tuesday in January was taken and carried without a division.

The blank for the meeting of the canvassers was also filled with the 15th day of February.

On motion of Mr. Fairlie, and after some discussion by him, and Messrs. Radcliff and Young, the third resolution was amended so as to authorise the five thousand copies of these resolutions and of the amended constitution to be distributed by special messengers.

The preamble and resolutions as amended then passed, and the committee rose and reported.

On motion of Col. Young, the Convention resolved itself into a committee of the whole, on the amendments as reported by the committee of which Mr. Yates is Chairman.—Mr. Lawrence in the chair.

The first article (relative to the council of revision) was read.

On motion of Mr. Tompkins, the two first lines, containing the words 'the council of revision, as established by the 3d article of the constitution, is abolished,' were stricken out.

The second article (relative to the executive department) was read.

Gen. Root moved to amend the article, so as to make the governor and lieutenant governor elective annually, instead of every two years.

The motion was supported by Messrs. Root and Hogeboom, and opposed by Messrs. Edwards and Fairlie, when the question was taken by ayes and noes, and decided in the negative, 61 to 49, as follows:

NOES—Messrs. Bacon, Baker, Beckwith, Bowman, Briggs, Brinkerhoff, Buel, D. Clark, Clyde, Dubois, Duer, Dyckman, Edwards, Fairlie, Hallock, Hees, Hunter, Huntington, Hurd, Jay, Jones, King, Lansing, Lefferts, Millikin, Munro, Nelson, Paulding, Porter, Radcliff, Rhinelander, Rockwell, Rogers, Rose, Ross, Russell, Sage, Sanders, Schenck, Seaman, Sharpe, I. Smith, R. Smith, Stagg, Steele, Sylvester, Ten Eyck, Van Horne, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, A. Webster, Wendover, Wheaton, E. Williams, N. Williams, Woodward, Yates—61.

AYES—Messrs. Barlow, Birdseye, Brooks, Burroughs, Carver, Case, Child, R. Clarke, Collins, Cramer Eastwood, Fenton, Ferris, Frost, Hogeboom, Howe, Humphrey, Hunt, Hunting, Knowles, A. Livingston, P. R. Livingston, M'Call, Moore, Park, Pike, Pitcher, Pumpelly, Reeve, Richards, Root, Rose-

brugh, R. Sanford, Seely, Sheldon, Starkweather, Swift, Taylor, Townley, Townsend, Tripp, Tuttle, Van Fleet, E. Webster, Wheeler, Woods, Wooster, Young—49.

MR. DUER moved to strike out the word "biennial," with a view that a new election for governor should take place immediately, in case of a vacancy by death or otherwise.

MR. BUEL requested that the committee might rise for a few minutes, for the purpose of giving some instructions to the committee of three, of which he was a member.

The committee rose, and Mr. Buel stated the doubts of the committee, with regard to the time when the provisions of the new constitution relative to the appointing power should take effect.

In reply to these enquires, and to furnish the necessary instructions to the committee, Mr. Young offered the following resolution, which was adopted, and referred to the committee of which Mr. N. Sanford is chairman :

Resolved, That no appointments shall be made by virtue of this article, or in the manner therein prescribed until after the first day of January, 1823. That the offices of all persons elected by the people or appointed by the council under the constitution hereby amended, except as is herein otherwise ordered, shall be deemed to expire on the first day of January, 1823. *Provided*, however, that they shall continue to administer their respective offices thereafter until a new election or appointment of said offices shall be held or made pursuant to this article."

The Convention then re-resolved itself into a committee of the whole on the amendments—Mr. Lawrence in the chair.

MR. DUER modified his motion ; providing for the election of a governor immediately, in case his seat should become vacant by death or otherwise.

The motion was supported by Mr. Duer, and opposed by Messrs. Root and Tompkins, when the question was taken and lost.

MR. FAIRLIE then offered an amendment to provide, in case of the death of the governor and lieutenant governor, that the duties of the governor, in the first place, be performed by the President pro tem of the senate ; and in the event of his death, by the speaker of the house of assembly.

MR. BUEL thought the contingency too remote for a constitutional provision.

MR. BRIGGS inquired, who should administer the government, in case of the death of the governor, the lieutenant-governor, the president of the senate pro tem. and the speaker of the assembly? To whom would the gentleman from New-York resort, when this long line of legitimates should become extinct ?

MR. FAIRLIE replied, that in such an emergency, he would send for the gentleman from Schoharie.

The motion on the amendment was then put and lost.

The third article (relative to future amendments,) was read.

MR. TOMPKINS moved to amend the article, by striking out the provision requiring two-thirds of the second legislature to recommend amendments.

MR. RADCLIFF opposed the motion, and moved to strike out the provision requiring two-thirds of the first legislature, and to insert so as to require only a majority of the first legislature to recommend amendments to the people.

Mr. Tompkins withdrew his motion, and the question on Mr. Radcliff's motion was taken by ayes and noes, and decided in the affirmative, 80 to 36, as follows :

AYES.—Messrs. Barlow, Beckwith, Birdseye, Bowman, Briggs, Brinkerhoff, Brooks, Burroughs, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Duer, Dyckman, Eastwood, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Humphrey, Hunt, Hunting, Hurd, Knowles A. Livingston, P. R. Livingston, M'Call, Moore, Nelson, Park, Pike, Pitcher, President, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Rose, Rosebrugh, Ross, Russell, Sage, R. Sandford, Schenck, Seaman, Seely, Sheldon, I. Smith, R. Smith, Starkweather, Swift, Taylor, Townsend, Tripp, Tuttle, Van Fleet, Van Horne, A. Webster, E. Webster, Wheeler, Woods, Woodward, Wooster, Young.—80

NOES.—Messrs. Bacon, Baker, Breese, Edwards, Fairlie, Hunter, Huntington, Jay, Jones, King, Lansing, Lefferts, Millikin, Munro, Paulding, Porter, Rhinelander, Rogers, Sanders, Sharpe, Stagg, Steele, Sylvester, Ten Eyck, Townley, Van Ness, J. R. Van Rensselaer, S. Van Rensselaer, Van Vechten, Verbryck, Ward, Wendover, Wheaton, E. Williams, N. Williams, Yates.—36.

The 4th article, (relative to the right of suffrage) was read.

Col. Young moved to insert the words "in the year next preceding the election," after the word "thereon," in the first proviso to the first section, requiring persons of colour to pay a tax for the year next preceding the election in the same manner as white persons; which was carried, and the section passed without further amendment.

Mr. Tompkins moved to strike out the second section, which provides that "laws may be passed, excluding from the right of suffrage persons who have been or may be convicted of infamous crimes."

Mr. Cramer was opposed to striking out; when the motion was put and lost.

The third section (requiring proofs of the requisite qualifications of voters) passed without amendment; and the fourth section (abolishing the existing qualifications of voters) was stricken out.

The fifth and sixth sections (providing for elections by ballot, and prescribing the oath of office) passed without amendment.

The fifth article, (relative to the commencement of the political year) passed without amendment.

Here Mr. E. Williams remarked, that we were going over precisely the the same ground in this room which the select committee of three were travelling over in an adjoining chamber. If the proceedings of both bodies should go before the public, the people might be in doubt which set of papers were spurious and which genuine. He therefore moved that the committee rise and report; which motion prevailed, and the committee rose without asking leave to sit again.

Adjourned to 10 o'clock to-morrow morning.

WEDNESDAY, NOVEMBER 7, 1821.

The President took the chair at the usual hour, and the minutes of yesterday were read and approved.

Mr. N. Sanford, from the committee of three, appointed to incorporate and arrange the amendments, in connexion with the remaining provisions of the present constitution, presented a report, which was read by the secretary, in the words following:

WE, the people of the state of New-York, acknowledging with gratitude the grace and beneficence of God, in permitting us to make a free choice of our form of government, do establish this constitution.

ARTICLE FIRST.

Sec. 1. The legislative power of this state shall be vested in a senate and an assembly.

Sec. II. The senate shall consist of thirty-two members. The senators shall be chosen for four years, and shall be freeholders. The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

Sec. III. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each house shall choose its own officers; and the senate shall choose a temporary president, when the lieutenant governor shall not attend as president, or shall act as governor.

Sec. IV. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall

be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Sec. V. The state shall be divided into eight districts, to be called senate districts, each of which shall choose four senators.

The first district shall consist of the counties of Suffolk, Queens, Kings, Richmond, and New-York.

The second district shall consist of the counties of Westchester, Putnam, Dutchess, Rockland, Orange, Ulster, and Sullivan.

The third district shall consist of the counties of Greene, Columbia, Albany, Rensselaer, Schoharie, and Schenectady.

The fourth district shall consist of the counties of Saratoga, Montgomery, Hamilton, Washington, Warren, Clinton, Essex, Franklin, and St. Lawrence.

The fifth district shall consist of the counties of Herkimer, Oneida, Madison, Oswego, Lewis, and Jefferson.

The sixth district shall consist of the counties of Delaware, Otsego, Chenango, Broome, Cortland, Tompkins, and Tioga.

The seventh district shall consist of the counties of Onondaga, Cayuga, Seneca, and Ontario.

The eighth district shall consist of the counties of Steuben, Livingston, Monroe, Genesee, Niagara, Erie, Allegany, Cattaraugus, and Chautauque.

And as soon as the senate shall meet, after the first election to be held in pursuance of this article, they shall cause the senators to be divided by lot, into four classes, of eight in each class, so that every district shall have one senator of each class; the classes to be numbered, one, two, three, and four. And the seats of the first class shall be vacated at the end of the first year; of the second class at the end of the second year; of the third class at the end of the third year; of the fourth class at the end of the fourth year; and so on continually, in order that one senator be annually elected in each senate district.

Sec. VI. An enumeration of the inhabitants of the state, shall be taken under the direction of the legislature, in the year one thousand eight hundred and twenty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of colour not taxed; which districts shall remain unaltered, until the return of another enumeration. But every district shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district.

Sec. VII. The members of the assembly, shall be chosen by counties, and shall be apportioned among the several counties of the state, as nearly as may be, according to the numbers of their respective inhabitants, excluding aliens, paupers, and persons of colour not taxed. An apportionment of members of assembly shall be made by the legislature, at its first session after the return of every enumeration; and when made, shall remain unaltered until another enumeration shall have been taken. But an apportionment of members of the assembly shall be made by the present legislature; and if not made by it, shall be made by the first legislature elected, under this constitution; and until the next apportionment shall be made, the assembly shall consist of one hundred and twenty-six members, apportioned among the several counties as they now are. Every county heretofore established, and separately organized, shall always be entitled to one member of the assembly, and no new county shall hereafter be erected unless its population shall entitle it to a member.

Sec. VIII. Any bill may originate in either house of the legislature; and all bills passed by one house may be amended by the other.

Sec. IX. The members of the legislature, shall receive for their services, a compensation to be ascertained by law, and paid out of the public treasury; but no increase of the compensation shall take effect, during the year in which it shall have been made. And no law shall be passed, increasing the wages of the legislature, beyond the sum of three dollars per day, unless by a majority of all the members elected to both branches of the legislature; and unless its continuance shall be limited to two years after the passage thereof; and the yeas and nays shall be taken thereon, and entered on the journals.

Sec. X. No member of the legislature, shall receive any civil appointment from the governor and senate, or from the legislature, during the term for which he shall have been elected.

Sec. XI. No person, being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, while a member of the legislature. be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Sec. XII. Every bill which shall have passed the senate and assembly, shall, before it become a law, be presented to the governor: If he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present, shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members present, it shall become 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 and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

Sec. XIII. The political year shall begin on the first day of January; and the legislature shall every year assemble on the first Tuesday of January, unless a different day shall be appointed by law.

Sec. XIV. The next election for governor, lieutenant-governor, senators and members of assembly, shall commence on the first Monday of November, one thousand eight hundred and twenty-two; and all subsequent elections, shall be held at such time, in the month of October, or November, as the legislature shall, by law, provide.

Sec. XV. The governor, lieutenant-governor, senators, and members of assembly, first elected, under this constitution, shall enter on the duties of their respective offices, on the first day of January, one thousand eight hundred and twenty-three; and the governor, lieutenant-governor, senators, and members of assembly, now in office, shall continue to hold the same until the first day of January, one thousand eight hundred and twenty-three, and no longer.

Sec. XVI. All officers holding their offices during good behaviour, may be removed by joint resolution of the two houses of the legislature, if two-thirds of all the members elected to the assembly, and a majority of all the members elected to the senate, concur therein.

ARTICLE SECOND.

Sec. I. Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state, one year preceding any election, and for the last six months a resident of the town or county, where he may offer his vote; and shall have within the year next preceding the election, paid a tax to the state or county, assessed upon his real or personal property; or shall by law be exempted from taxation; or being armed and equipped according to law, shall have performed within that year, military duty in the militia of this state; or who shall be exempted from performing militia duty in consequence of being a fireman in any city, town or village in this state: And also, every male citizen of the age of twenty-one years, who shall have been for three years next preceding such election, an inhabitant of this state; and for the last year, a resident in the town or county, where he may offer his vote; and shall have been, within the last year, assessed to labour upon the public highways, and shall have performed the labour, or paid an equivalent therefor, according to law; shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people: But no man of colour, un-

less he shall have been for three years a citizen of this state, and for one year next preceding any election, shall be seized and possessed of a freehold estate of the value of two hundred and fifty dollars over and above all debts and incumbrances charged thereon ; and shall have been actually rated, and paid a tax thereon, shall be entitled to vote at any such election. And no person of colour shall be subject to direct taxation, unless he shall be seized and possessed of such real estate as aforesaid.

Sec. II. Laws may be passed, excluding from the right of suffrage, persons who have been, or may be, convicted of infamous crimes.

Sec. III. Laws shall be made for ascertaining by proper proofs, the citizens who shall be entitled to the right of suffrage, hereby established.

Sec. IV. All elections by the citizens, shall be by ballot, except for such town offices, as may by law be directed to be otherwise chosen.

ARTICLE THIRD.

Sec. I. The executive power shall be vested in a governor. He shall hold his office for two years ; and a lieutenant governor, shall be chosen at the same ime, and for the same term.

Sec. II. No person, except a native citizen of the United States, shall be eligible to the office of governor ; nor shall any person be eligible to that office, who shall not be a freeholder, and shall not have attained the age of thirty years, and have been five years a resident within this state ; unless he shall have been absent during that time, on public business of the United States, or of this state.

Sec. III. The governor and lieutenant governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant governor, shall be elected ; but in case two or more shall have an equal and the highest number of votes for governor, or lieutenant governor, the two houses of the legislature, shall by joint ballot, choose one of the said persons so having the highest number of votes, for governor, or lieutenant governor.

Sec. IV. The governor shall be general and commander in chief of all the militia, and admiral of the navy of the state. He shall have power to convene the legislature, or the senate only, on extraordinary occasions. He shall communicate by message to the legislature at every session, the condition of the state ; and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall at stated times, receive for his services, a compensation which shall neither be increased nor diminished, during the term for which he shall have been elected.

Sec. V. The governor shall have power to grant reprieves and pardons after conviction, for all offences, except treason and cases of impeachment. Upon convictions for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting ; when the legislature shall either pardon, or direct the execution of the criminal, or grant a farther reprieve.

Sec. VI. In case of the impeachment of the governor, or his removal from office, death, resignation or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor until the next biennial election, or until the governor absent or impeached shall return, or be acquitted. But when the governor shall with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall still continue commander in chief of all the military force of the state.

Sec. VII. The lieutenant governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or be absent from the state, the President of the senate, shall act as governor, until the vacancy shall be filled, or the disability shall cease.

ARTICLE FOURTH.

Sec. I. Militia officers shall be chosen, or appointed, as follows: Captains, subalterns, and non-commissioned officers, shall be chosen by the written votes of the members of their respective companies. Field officers of regiments, and separate battalions, by the written votes of the commissioned officers of the respective regiments, and separate battalions. Brigadier generals, by the field officers of their respective brigades. Major generals, brigadier generals, and commanding officers of regiments or separate battalions, shall appoint the staff-officers of their respective divisions, brigades, regiments, or separate battalions.

Sec. II. The governor shall nominate, and with the consent of the senate, appoint all major generals, brigade inspectors, and chiefs of the staff departments, except the adjutant general and commissary general. The adjutant general shall be appointed by the governor.

Sec. III. The legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their elections to the governor. If the electors of captains, subalterns, or field officers of brigades, regiments, or separate battalions shall neglect, or refuse to make such election, after being notified, according to law, the governor shall fill the offices; and the persons appointed by him, shall hold their offices until an election shall be made.

Sec. IV. The commissioned officers of the militia shall be commissioned by the governor; and no commissioned officers shall be removed from office, unless by the senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial pursuant to law. The present officers of the militia shall hold their commissions, subject to removal as before provided.

Sec. V. In case the mode of election and appointment of militia officers hereby directed, shall not be found conducive to the improvement of the militia the legislature may abolish the same, and provide by law for their appointment, and removal, if two-thirds of the members present in each house, shall concur therein.

Sec. VI. The secretary of state, comptroller, treasurer, attorney general, surveyor general, and commissary general, shall be appointed as follows: The senate and assembly shall each openly nominate one person for the said offices respectively: After which, they shall meet together, and if they shall agree in their nominations, the persons so nominated shall be appointed to the office for which he shall be nominated. If they shall disagree, the appointment shall be made by the joint ballot of the senators, and members of assembly. The treasurer shall be chosen annually. The secretary of state, comptroller, attorney general, surveyor general, and commissary general, shall hold their offices for three years, unless sooner removed by concurrent resolution of the senate and assembly.

Sec. VII. The governor shall nominate, by message in writing, and with the consent of the senate, shall appoint all judicial officers, except justices of the peace, who shall be appointed in manner following; that is to say: The boards of supervisors in every county in this state, shall, at such times as the legislature may direct, meet together; and they, or a majority of them so assembled, shall nominate a list of persons, equal in number to the justices of the peace, to be appointed in the several towns in the respective counties. And the judges of the respective county courts of such counties, or a majority of them, shall also meet and nominate a list, of the like number of persons; and it shall be the duty of the said boards of supervisors, and judges of county courts, to compare such lists, at such time and place, as the legislature may direct: And if on such comparison, the said boards of supervisors and judges of county courts, shall agree in their nominations, in all, or in part, they shall file a certificate of the nominations in which they shall agree, in the office of the clerk of the county; and the person or persons, nominated on both lists, shall be justices of the peace: And in case of disagreement in whole, or in part, it shall be the farther duty of the said boards of supervisors, and judges respectively, to transmit their said lists so far as they disagree, in the same, to the governor, who shall select from the said lists, and appoint so many justices of the peace, as shall be requisite to

fill the vacancies. Every person appointed a justice of the peace, shall hold his office for four years, unless removed by the county court for causes particularly assigned by the judges of the said court. And no justice of the peace shall be removed, until he shall have notice of the charges made against him, and an opportunity of being heard in his defence.

Sec. VIII. Sheriffs, and clerks of counties, including the register, and clerk, of the city and county of New-York, shall be chosen by the electors of the respective counties, once in three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law, to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff: And the governor may remove any such sheriff, clerk, or register, at any time within the three years, for which he shall be elected, giving to such sheriff, clerk, or register, a copy of the charge against him, and an opportunity of being heard in his defence, before any removal shall be made.

Sec. IX. The clerk of courts, except those clerks whose appointment is provided for in the preceding section, shall be appointed by the courts of which they respectively are clerks; and district attornies, by the county courts. Clerks of courts, and district attornies, shall hold their offices for three years, unless sooner removed by the courts appointing them.

Sec. X. The mayors of all the cities in this state, shall be appointed annually, by the common councils of the respective cities.

Sec. XI. So many coroners as the legislature may direct, not exceeding four for each county, shall be elected in the same manner as sheriffs are directed to be elected, and shall hold their offices for the same term, and be removable in like manner.

Sec. XII. The governor shall nominate, and with the consent of the senate, appoint masters and examiners in chancery; who shall hold their offices for three years, unless sooner removed, by the senate, on the recommendation of the governor. The registers and assistant registers, shall be appointed by the chancellor, and hold their offices during his pleasure.

Sec. XIII. The clerk of the court of oyer and terminer, and general sessions of the peace in and for the city and county of New-York, shall be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of the said court; and such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the several courts, or by the governor, with the consent of the senate, as may be directed by law.

Sec. XIV. The special justices, and the assistant justices, and their clerks in the city of New-York, shall be appointed by the corporation of the said city; and shall hold their offices for the same term, that the justices of the peace, in the other counties of this state, hold their offices, and shall be removable in like manner.

Sec. XV. All officers heretofore elective by the people, shall continue to be elected; and all other officers, whose appointment is not provided for by this constitution, and all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as may by law be directed.

Sec. XVI. Where the duration of any office is not prescribed by this constitution it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

ARTICLE FIFTH.

Sec. I. The court for the trial of impeachments and the correction of errors, shall consist of the president of the senate, the senators, the chancellor, and judges of the supreme court or the major part of them; but when an impeachment shall be prosecuted against the chancellor, or any judge of the supreme court, the person so impeached, shall be suspended from exercising his office, until his acquittal; and when an appeal from a decree in chancery shall be heard, the chancellor shall inform the court of the reasons for his decree, but

shall have no voice in the final sentence; and when a writ of error shall be brought on a judgment of the supreme court, the judges of that court shall assign the reasons for their judgment, but shall not have a voice for its affirmance or reversal.

Sec. II. The assembly shall have the power of impeaching all officers of this state for misconduct in office: but a majority of all the members elected, shall concur in an impeachment. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try and determine the charge in question, according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend farther than the removal from office, and disqualification to hold, and enjoy, any office of honour, trust, or profit under this state; but, the party convicted shall be liable to indictment, and punishment according to law.

Sec. III. The chancellor, and judges of the supreme court, shall hold their offices during good behaviour, or until they shall attain the age of sixty years.

Sec. IV. The supreme court shall consist of a chief justice, and two justices.

Sec. V. The state shall be divided, by law, into a convenient number of districts, not less than four, nor exceeding eight, subject to alteration, by the legislature, from time to time, as the public good may require; for each of which, a district judge shall be appointed, in the same manner, and hold his office by the same tenure, as the justices of the supreme court; and who shall possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court, and shall preside in courts of oyer and terminer and general gaol delivery. And such equity powers may be vested in the said district judges, and in the county courts, or in such other subordinate courts, as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor.

Sec. VI. Judges of the county courts, and recorders of cities, shall hold their offices for five years, but may be removed by the senate, on the recommendation of the governor, for causes to be stated in such recommendation.

Sec. VII. The chancellor and judges of the supreme court, shall not hold any other office or public trust.

ARTICLE SIXTH.

Sec. I. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: I do solemnly swear, (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the state of New-York; and that I will faithfully discharge the duties of the office of according to the best of my ability.

And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

ARTICLE SEVENTH.

Sec. I. No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to the citizens of this state by this constitution, unless by the law of the land, or the judgment of his peers.

Sec. II. The trial by jury in all cases in which it has been heretofore used, shall remain inviolate for ever; and no new court shall be instituted but such as shall proceed according to the course of the common law, except such courts of equity, as the legislature is herein authorized to establish.

Sec. III. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Sec. IV. No minister of religion, or priest of any denomination whatever, shall hold any civil or military office or place in this state.

Sec. V. The militia of this state, shall, at all times hereafter, be armed and disciplined, and in readiness for service; but all such inhabitants of this state,

of any religious denomination whatever, as from scruples of conscience, may be averse to bearing arms, shall be excused therefrom, by paying to the state an equivalent in money; and the legislature shall provide by law, for the collection of such equivalent, to be estimated according to the expense, in time, and money, of an ordinary able bodied militia man.

Sec. VI. The privilege of the writ of habeas corpus, shall not be suspended, unless when in cases of rebellion, or invasion, the public safety may require its suspension.

Sec. VII. No person shall be held to answer for a capital, or otherwise infamous crime, except in cases of impeachment, and in cases of the militia, when in actual service, and the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace, and in cases of petit larceny, under the regulation of the legislature, unless on presentment, or indictment of a grand jury; and in every trial on impeachment or indictment, the party accused shall be allowed counsel as in civil actions. No person shall be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law: Nor shall private property be taken for public use, without just compensation.

Sec. VIII. Every citizen may freely speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that right; and no law shall be passed, to restrain, or abridge, the liberty of speech, or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence, to the jury; and if it shall appear to the jury, that the matter charged as libellous, is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Sec. IX. The assent of two-thirds of the members elected to each branch of the legislature, shall be requisite to every bill appropriating the public monies or property, for local or private purposes, or creating, continuing, altering, or renewing any body politic or corporate.

Sec. X. The proceeds of all lands belonging, or which may hereafter belong to this state, except such parts thereof as may be reserved or appropriated to public use, or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund; the interest of which, shall be inviolably appropriated and applied to the support of common schools throughout this state. Rates of toll, not less than those agreed to by the canal commissioners, and set forth in their report to the legislature of the twelfth of March, one thousand eight hundred and twenty-one, shall be imposed on, and collected from all parts of the navigable communications between the great western and northern lakes and the Atlantic ocean, which now are, or hereafter shall be made and completed: And the said tolls, together with the duties on the manufacture of all salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; and the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars, otherwise appropriated by the said act; and the amount of the revenue, established by the act of the legislature of the thirtieth of March, one thousand eight hundred and twenty, in lieu of the tax upon steam-boat passengers; shall be and remain inviolably appropriated and applied to the completion of such navigable communications, and to the payment of the interest, and reimbursement of the capital, of the money already borrowed, or which hereafter shall be borrowed, to make and complete the same. And neither the rates of toll, on the said navigable communications, nor the duties on the manufacture of salt aforesaid, nor the duties on goods sold at auction as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; nor the amount of the revenue established by the act of March the thirtieth, one thousand eight hundred and twenty, in lieu of the tax upon steam-boat passengers, shall be reduced or diverted, at any time before the full and complete payment of the principal and interest of the money borrowed, or to be borrowed, as aforesaid. And the legislature shall never sell or dispose of the salt springs belonging to this state, nor the

lands contiguous thereto, which may be necessary or convenient for their use; nor the said navigable communications, or any part or section thereof; but the same shall be and remain the property of this state.

Sec. XI. No lottery shall hereafter be authorized in this state; and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by law.

Sec. XII. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made of or with the Indians in this state, shall be valid, unless made under the authority, and with the consent of the legislature.

Sec. XIII. Such parts of the common law of England, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the convention of the state of New-York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired or been repealed, or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

Sec. XIV. All grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October one thousand seven hundred and seventy-five, shall be null and void: but nothing contained in this constitution, shall affect any grants of land within this state, made by the authority of the said King or his predecessors, or shall annul any charters to bodies politic or corporate, by him or them, made before that day: or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or proceedings in courts of justice.

ARTICLE EIGHTH.

Sec. I. Any amendment, or amendments, to this constitution, may be proposed in the senate or assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment, or amendments, shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published for three months previous to the time of making such choice, and if, in the legislature next chosen as aforesaid, such proposed amendment, or amendments, shall be agreed to, by two thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment, or amendments, to the people, in such manner, and at such time, as the legislature shall prescribe; and if the people shall approve and ratify such amendment, or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment, or amendments, shall become part of the constitution.

ARTICLE NINTH.

Sec. I. This constitution shall be in force after the last day of December, in the year one thousand eight hundred and twenty-two. But such parts of the same as respect the right of suffrage, and the elections to be held on the first Monday of November in the year last mentioned, shall take effect on that day. And sheriffs, clerks of counties, and coroners, shall then be elected; but they shall not enter on the duties of their offices before the first day of January next following. All persons in office on the last day of December in the year one thousand eight hundred and twenty-two, shall hold their offices until the same shall be filled in pursuance of this constitution.

Sec. II. The existing laws relative to the manner of holding and conducting elections, and making returns, shall be in force in respect to the elections

to be held on the first Monday of November, one thousand eight hundred and twenty-two, so far as the same are applicable. And the present legislature may pass farther laws for the execution of the provisions of this constitution, in respect to the elections to be then held.

Mr. SANFORD remarked, that the committee had made out two copies of the report, one of which was then in the hands of the printer, and would be ready for the use of the members by 5 o'clock in the afternoon.

MR. BUEL, from the committee, hoped the Convention would not think proper to enter upon the consideration of the report, till the whole of it was printed and laid on the table, as it would be impossible to act on it intelligibly, unless the whole was seen and taken up in connexion.

GEN. ROOT called for the reading again of that section, recognizing the common law of England. and the colonial laws and statutes, so far as recognized by the present constitution. He believed the recognition unnecessary.

The section was read, and MR. BUEL explained. He thought it would be dangerous to strike out this recognition, without knowing what laws and statutes it would affect.

Mr. R. said that four or five editions of the laws now in force in this state, had been published, none of which contained any laws, that had not been re-enacted—some of them several times.

MR. JAY remarked, that in Varick and Jones' edition of revised laws, there were several which had not been re-enacted.

MR. VAN VECHTEN was opposed to sweeping off, without examination, all colonial laws and statutes, some of which might have a bearing, of which we are wholly ignorant.

GEN. ROOT could not consent to send a constitution to the people, which recognized English statutes.

MR. WHEATON stated, that having had the honour to be a member of the select committee to which this important subject had been referred, he hoped that when the Convention acted on it, they would proceed in something like a regular manner. He wished the articles to be taken up in a regular order, as they stood in the report; as it would be found that the committee had transposed the different parts of the old constitution as well as of the new; and changed not a little of the style and phraseology of both. This was a task of much more difficulty than, possibly, the house supposed, when it was confided to the select committee, who had anxiously endeavoured, and used all possible diligence to accomplish with accuracy the work in the very limited time which was allowed them for that purpose. It was necessary for them to use very great caution in abrogating any particular portion of the old constitution, as the rights of property and of public and private corporations might be affected by it in a manner that could not now be anticipated. With this view, the committee had inserted a saving clause for all existing laws, and charters, and grants of land, which might possibly be impaired by this transition from the old to a new government. But the gentleman from Delaware would find, on a comparison of the old and new constitutions, that no British statutes whatever, were revived or confirmed by the report: which was strictly confined to the existing laws of the state. To give time for such a comparison of every part of both instruments, it was necessary that the members of the Convention should have them, in print, on their table; they could then proceed with that deliberation which ought to characterize the discussions of this body.

The subject was thereupon postponed till it shall be brought up in order before the Convention.

MR. STEELE offered the following resolution:

Resolved, That a respectful address be presented to the people of this state, with the constitution that shall be approved by this Convention, and that a committee of members be appointed to draft and report the same.

After some discussion by Messrs. Sharpe, J. R. Van Rensselaer, Buel, Birdseye, Van Vechten, Root, and N. Williams, in which the resolution was

supported on the ground of its being proper for the people to have a full expression of the sentiments of this Convention, and of its being customary in such cases; and opposed upon the ground that the people had a fair expression of the sentiments of the Convention in the amended constitution itself, and that if any other explanations were necessary, an address might be made by individuals in an unofficial capacity; the question was taken by ayes and noes, and decided in the affirmative, as follows:

AYES.—Messrs. Barlow, Beckwith, Bowman, Briggs, Brinkerhoff, Brooks, Burroughs, Carver, Case, Child, R. Clarke, Collins, Dubois, Dyckman, Eastwood, Fairlie, Fenton, Frost, Hogeboom, Howe, Hunt, Hunting, Knowles, Lefferts, A. Livingston, P. R. Livingston, M'Call, Moore, Nelson, Park, Pitcher, Porter, Pumpelly, Radcliff, Richards, Rockwell, Root, Rosebrugh, Ross, Russell, Sage, N. Sanford, R. Sandford, Schenck, Seaman, Seely, Sharpe, Sheldon, Starkweather, Steele, Swift, Taylor, Townley, Townsend, Tuttle, Verbryck, Ward, A. Webster, Wheeler, N. Williams, Woods, Young.—61.

NOES.—Messrs. Bacon, Baker, Birdseye, Buel, Clyde, Duer, Edwards, Hallock, Hees, Hunter, Huntington, Jay, Jones, King, Lansing, Lawrence, Millikin, Munro, Paulding, Rhinelander, Rogers, Sanders, I. Smith, R. Smith, Stagg, Sylvester, Ten Eyck, Van Fleet, Van Horne, Van Ness, J. R. Van Rensselaer, Van Vechten, E. Webster, Wendover, Wheaton, E. Williams, Woodward, Wooster, Yates.—39.

On motion, it was decided, that the committee to draft the address consist of three, and the President named Messrs. Root, Hunting, and Steele to compose the said committee. Adjourned to 10 o'clock to-morrow morning.

THURSDAY, NOVEMBER 8, 1821.

The Convention met as usual, and the minutes of yesterday were read and approved.

Mr. N. Williams offered the following resolution:

"*Ordered*, That the re-printing of the journals of 1801, which has been done for the use of this Convention, be charged to the contingent expenses attendant on their proceedings." Carried.

The Convention then went into committee of the whole, on the report of the select committee to whom was referred the subject of incorporating and consolidating into an amended constitution, all the sections and provisions to the existing constitution which are not modified, altered, or abolished; together with the alterations and amendments approved, or to be approved by this Convention—Mr. Lawrence in the chair.

The first six sections of the report on the legislative power were read, and with a few verbal amendments passed.

The seventh section, (relative to members of assembly,) was read, when

Mr. Russell moved to strike out all that part of the section after the word "taken," in the tenth line, to the word "every," in the seventeenth line, and to insert in lieu thereof as follows:

"And until an apportionment of members of assembly be made by the legislature, according to the provisions of this constitution, the members of assembly shall be chosen in the respective counties, in the proportions following, to wit:

"Albany 3, Allegany 1, Broome 1, Cayuga 4, Chenango 3, Chautauque 1, Clinton 1, Columbia 3, Cortland 2, Cattaraugus 1, Delaware 2, Dutchess 4, Essex 1, Erie 1, Franklin 1, Genesee 4, Greene 2, Herkimer 3, Jefferson 3, Kings 1, Livingston 2, Lewis 1, Madison 3, Monroe 3, Montgomery and Hamilton 4, Niagara 1, New-York 10, Oneida 5, Orange 4, Onondaga 4, Ontario 6, Otsego 4, Oswego 1, Putnam 1, Queens 2, Rensselaer 4, Richmond 1, Rockland 1, Saratoga 3, Schenectady 1, Seneca 2, Schoharie 2, St. Lawrence 1, Steuben 2, Suffolk 2, Sullivan 1, Tioga 2, Tompkins 2, Ulster 3, Warren 1, Washington 4, Westchester 3."

A discussion ensued, in which Messrs. N. Sanford, Buel, Sharpe, Wheeler, Birdseye, Radcliff, King, Cramer, Van Vechten, Young, and Root, took part,

when the question was taken by ayes and noes, and decided in the negative, 76 to 27, as follows:

NOES.—Messrs. Baker, Barlow, Beckwith, Bowman, Briggs, Case, Child, D. Clarke, Collins, Cramer, Dubois, Duer, Dyckman, Edwards, Fenton, Frost, Hallock, Hogeboom, Howe, Hunt, Hunter, Hunting, Hurd, Jones, King, Knowles, Lansing, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Munro, Park, Paulding, Pike, Pitcher, Pumpelly, Radcliff, Reeve, Rhinelander, Richards, Rockwell, Root, Rose, Rosebrugh, Ross, Sage, Sanders, R. Sandford, Schenck, Seaman, Seely, Sharpe, Sheldon, I. Smith, Stagg, Starkweather, Swift, Sylvester, Taylor, Townley, Tuttle, Van Fleet, Van Horne, Van Ness, J. R. Van Rensselaer, Van Vechten, Verbryck, E. Webster, Wendover, Wheeler, Woodward, Wooster, Yates, Young,—76.

AYES.—Messrs. Bacon, Birdseye, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Carver, Eastwood, Fairlie, Ferris, Huntington, Jay, Nelson, Porter, President, Rogers, Russell, N. Sanford, R. Smith, Steele, Ten Eyck, Townsend, Ward, Wheaton, E. Williams, Woods—27.

The 7th section passed, with an amendment, making it imperative on the present legislature to apportion the members of the assembly according to the last United States census.

The 8th section (relative to originating bills) passed without amendment.

The 9th section (relative to compensation of the members of the legislature,) was read.

Mr. Tompkins moved to strike out the words from " and," in the 6th line, to the word " thereof," in the 11th, embracing the clause which prohibits the legislature to increase their wages beyond the sum of $3 per day.

Mr. Sheldon called for the ayes and noes; and in making this call, he opposed at considerable length the motion of Mr. Tompkins. He believed three dollars a day was an adequate compensation for members; and it was well to place a check upon those who might feel power and forget right.

Mr. Tompkins thought we were belittleing ourselves, by courting popularity in this way. The prices of labour and the expense of living were constantly varying. It might happen that the services of a member of the legislature would hereafter be worth five, six, or seven dollars a day; and yet we were about to tie up the hands of the legislature for perhaps half a century.

Mr. Briggs did not differ much from the gentleman from Montgomery, (Mr. Sheldon) but it would in his opinion be imprudent to shackle the legislature with a constitutional provision of this kind.

Mr. Van Vechten proposed a modification of Mr. Tompkins' motion, by including the whole section after the word " and"; to which Mr. T. assented.

Mr. Ross was unwilling we should manifest so much distrust of future legislatures, although he had no particular objections to the section as it now stands.

Mr. Child was sorry to see so many amendments proposed at this late hour. If we recommenced the work of amendment in this way there would be no end to our labours. There were some things he would wish to see altered, such as the mode of electing sheriffs, &c.

Mr. Birdseye made a few remarks against a clause of this kind. It was entering too much into detail.

Mr. Wheeler then moved to strike out all that part of the section, which follows the word per day"—so as to limit the maximum at three dollars permanently in the constitution.

Whereupon Mr. Tompkins suspended his motion, and after some discussion by Messrs. Fairlie and Burroughs, the question on Mr. Wheeler's motion was taken by ayes and noes, and carried in the affirmative, as follows:

AYES—Messrs. Baker, Bacon, Bowman, Buel, Carver, Child, Clyde, Collins, Cramer, Dubois, Duer, Edwards, Ferris, Hallock, Hogeboom, Hurd, Jones, Knowles, A. Livingston, Munro, Pike, Pitcher, Porter, President, Pumpelly, Reeve, Richards, Rockwell, Rogers, Rosebrugh, Sanders, N. Sanford, Seely, Sheldon, R. Smith, Stagg, Starkweather, I. Sutherland, Ten Eyck, Townley, Townsend, Tuttle, Van Buren, Van Horne, J. R. Van Rensselaer, Verbryck, E. Webster, Wheeler, Woodward, Wooster, Yates, Young.—53.

NOES—Messrs. Barlow, Beckwith, Birdseye, Briggs, Brinkerhoff, Brooks,

Burroughs, Carpenter, Case, D. Clark, R. Clarke, Dyckman, Eastwood, Fairlie, Frost, Howe, Hunter, Hunting, Huntington, Jay, King, Lansing, Lefferts, P. R. Livingston, M'Call, Millikin, Moore, Nelson, Park, Paulding, Radcliff, Rhinelander, Root, Rose, Ross, Russell, Sage, R. Sanford, Schenck, Seaman, Sharpe, I. Smith, Steele, Swift, Sylvester, Taylor, Van Fleet, Ward, Wendover, Wheaton, N. Williams, Woods.—50.

Mr. Tompkins then renewed his motion to strike out the words "and no law shall be passed increasing the wages of the legislature beyond the sum of three dollars per day," on which the question was taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Bacon, Baker, Barlow, Brooks, Buel, Carpenter, Carver, Case, Child, Clyde, Collins, Cramer, Dubois, Duer, Dyckman, Edwards, Ferris, Hallock, Hogeboom, Howe, Hunt, Hurd, Jones, King, Knowles, Lansing, A. Livingston, P. R. Livingston, Millikin, Moore, Munro, Pike, Pitcher, Pumpelly, Reeve, Rhinelander, Rockwell, Rogers, Rose, Ross, Sage, Sanders, N. Sanford, Seaman, Seely, Sheldon, R. Smith, Starkweather, I. Sutherland, Taylor, Ten Eyck, Townley, Townsend, Van Buren, Van Fleet, Van Horne, J. R. Van Rensselaer, Verbryck, E. Webster, Wheeler, Woods, Woodward, Wooster, Yates, Young.—64.

AYES—Messrs. Birdseye, Bowman, Briggs, Brinkerhoff, Burroughs, R. Clarke, Fairlie, Fenton, Frost, Hunter, Hunting, Huntington, Jay, Lefferts, M'Call, Nelson, Park, Paulding, Porter, President, Radcliff, Root, R. Sanford, Schenck, Sharpe, I. Smith, Stagg, Steele, Swift, Sylvester, Tuttle, Ward, Wendover, Wheaton, N. Williams.—37.

Mr. Wheaton moved to strike out the word "wages" and insert "compensation," and to insert "members of the," so as to read "compensation of the members of the legislature." Carried.

Mr. Nelson then moved to strike out "three" and insert "two," (dollars) as the maximum of the pay of members. He had uniformly voted against fixing the compensation of the legislature, but if any sum were fixed, he would prefer two dollars to three.

The question was taken by ayes and noes, and decided in the negative, 67 to 39, as follows:

NOES—Messrs. Barlow, Brinkerhoff, Brooks, D. Clark, R. Clarke, Collins, Dubois, Duer, Dyckman, Edwards, Fairlie, Fenton, Ferris, Frost, Hallock, Hogeboom, Hunt, Hunting, Jay, Jones, King, Knowles, Lansing, Lefferts, A. Livingston, P. R. Livingston, Millikin, Moore, Munro, Paulding, Pike, Porter, Rhinelander, Richards, Rockwell, Root, Ross, Russell, Sage, N. Sanford, Seaman, Seely, Sharpe, Sheldon, R. Smith, Stagg, Starkweather, Steele, I. Sutherland, Swift, Sylvester, Ten Eyck, Townley, Townsend, Tuttle, Van Buren, Van Horne, Van Ness, Van Vechten, Verbryck, Ward, E. Webster, Wheaton, Wheeler, N. Williams, Wooster—67.

AYES—Messrs. Bacon, Baker, Beckwith, Birdseye, Bowman, Briggs, Buel, Burroughs, Carpenter, Carver, Case, Child, Clyde, Cramer, Eastwood, Hunter, Huntington, Hurd, M'Call, Nelson, Park, Pitcher, Pumpelly, Radcliff, Reeve, Rogers, Rose, Rosebrugh, Sanders, R. Sandford, Schenck, I. Smith, Taylor, Van Fleet, J. R. Van Rensselaer, Wendover, Woods, Woodward, Yates, Young—39.

The section then passed without further amendment.

The tenth and eleventh sections (prohibiting members of the legislature from receiving appointments from this state or United States) passed as reported.

The twelfth section (requiring all bills which have passed the two houses to be presented to the governor) was read.

Mr. Duer moved to strike out the words "in which case it shall not become a law," which follow the adjournment of the legislature, as being unnecessary. Lost.

Mr. Cramer moved to strike out *ten* and insert *five*, giving the governor five days instead of ten, for returning bills with his objections. Lost.

The 13th, 14th, 15th and 16th sections (relative to elections, the political

year, and removal from office by the joint vote of the senate and assembly,) passed without amendment.

ARTICLE SECOND, (right of suffrage) was read and passed without amendment.

GEN. ROOT moved that the committee rise and report, with a view of having the articles which have passed, engrossed by the secretary, if they shall be agreed to by the Convention. After passing the preamble, the committee rose and reported ; and

GEN. ROOT moved that the question be taken on agreeing to the report of the committee of the whole.

MR. BUEL moved to transpose the 12th and 16th sections in the first article. Carried.

MR. EDWARDS moved to strike out the words " a free," in the preamble, so as to read, permitting us to make choice of our government. Carried.

The Convention then re-resolved itself into a committee of the whole. Mr. Lawrence in the chair.

ARTICLE THIRD, (executive department,) was read by sections, the first five of which passed without amendment.

MR. BIRDSEYE moved to amend the 6th section (providing for a vacancy in the office of governor,) by striking out the words " until the next biennial election," and inserting the words " for the remainder of the term." Carried.

The 7th section (relative to the lieutenant governor) passed as reported.

ARTICLE FOURTH, (appointing power,) was read by sections, the first two of which passed as reported.

MR. BUEL moved to strike out the words " and the persons appointed by him (the governor) shall hold their offices until an election shall be made."

The motion was supported by the mover and Col. Young, and opposed by Gen. Root. Lost.

GEN. ROOT moved to strike out all that part of the section which follows the word " governor,' in the third line, (authorising the governor to fill vacancies in the militia in certain cases.) Carried ; and the section passed as amended.

Section 4th (militia officers to be commissioned by the governor) passed without amendment.

MR. WHEATON moved to amend the fifth section (authorizing the legislature to change the mode of electing militia officers) by striking out the words " if two-thirds of the members present in each house concur therein." His reasons were, that the clause might at some future period lead to difficulties between the national and the state governments ; and that the whole provision for electing militia officers would be attended with the most injurious consequences to the discipline of the militia. This would be peculiarly felt in the city which he had the honour to represent. But the objection, to which he wished now to call the attention of the house, was, that by the federal constitution, which was the supreme law of the land, congress is to provide for organizing, arming, and disciplining the militia, and the states reserve only the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress. It is congress, and not the state legislature, who are to organize the militia, and consequently to provide how it shall be officered. The plan of appointing the militia officers of this state adopted by the Convention is grounded upon the act of congress now in force. But that act may be repealed, or modified. An entirely different organization of the militia might hereafter be adopted by the national government. It had frequently been proposed to classify the militia of the union, so as to render it a more efficient force ; and Mr. W. ventured to predict that some such arrangement would be ultimately found necessary. The legislation of the state was subordinate to that of congress on this all-important subject. He entreated the Convention to pause before they finally adopted this untried theory, which would tie up the hands of the state legislature in such a manner that they could not conform our militia laws to the laws of the United States. Suppose such a change as he had alluded to were to be thought indispensably necessary in time of war ; and a minority in either house of the legislature, consisting of more than one-third, were obstinately to resist any proposed alteration in the

organization of our militia, in order to make it conform to the general system of the union, should we not be at open hostility with the national government? Would not the military force of this state be completely neutralized? Might not a factious minority baffle all the efforts of patriotism, until the slow process of amending our state constitution should bring us back to our allegiance to the union.

Mr. Van Buren opposed the motion. He apprehended no difficulties of the kind anticipated. The same objections would apply to all the sections relative to military appointments.

Mr. Wheaton then moved to reconsider the four first sections, with a view of striking them all out.

Gen. Root opposed the motion.

Mr. Wheaton replied that the experience of the late war was enough to show to what extreme lengths an opposition might go; and that if these five sections were all stricken out, it would not be necessary to insert any thing in their place, as the 16th section provided that the legislature should regulate the appointment of all such officers as were not specially provided for in the constitution.

The question was put, and lost.

Mr. Wheaton's motion to strike out the clause as above stated was also lost, and the section passed without amendment.

Section 6th (respecting appointments by the legislature (passed as reported.

Mr. Buel moved to amend the 7th section (respecting the general appointing power, and mode of appointing justices of the peace) by sundry verbal alterations which were adopted, and the section passed as amended.

Section 8th (respecting the election of sheriffs and county clerks by the people) was read.

Mr. Wheeler moved to amend the section by inserting after the word "sheriffs," the words "shall be appointed in the same manner as justices of the peace are directed to be appointed or chosen."

Mr. Van Buren wished the gentleman would modify his motion, so as to make the sheriffs appointed by the governor and senate.

Mr. Wheeler assented to the modification.

Mr. Briggs wished the gentleman would farther modify his motion, by making justices of the peace elective by the people.

Mr. Bacon remarked, that this subject had undergone great perils, both among its enemies and false brethren. He did not wish to be very pertinacious on this subject; but would implore of the honorable gentlemen in favour of the amendment, to spare one solitary feature in the constitution which should answer the wishes of the people, after having pretended to do so much. Let the experiment be tried, and if it shall lead to turmoil and confusion, the constitution provides an easy method of altering the plan, as the legislature shall think proper. It is very possible the plan will be so well received by the people, that they will hereafter determine that their justices of the peace shall also be elected.

Mr. B. thought that some gentlemen were asking too much. It was impossible for the gentleman from Delaware to spread his mantle over all his friends; and notwithstanding the election of sheriffs in some counties would operate rather unkindly, he did hope that this small remnant of power might be left with the people.

Mr. Sharpe called for the ayes and noes, that it might be seen what gentlemen had changed their minds on this subject.

The question on Mr. Wheeler's motion was then taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Bacon, Baker, Barlow, Birdseye, Breese, Briggs, Brinkerhoff, Brooks, Burroughs, Carpenter, Case, D. Clark, R. Clarke, Collins, Dubois, Duer, Dyckman, Edwards, Ferris, Frost, Hallock, Howe, Hunt, Hunter, Hunting, Huntington, Hurd, Jones, Lefferts, A. Livingston, M'Call, Millikin, Moore, Munro, Park, President, Pumpelly, Radcliff, Rockwell, Root, Rosebrugh, Russell, Rhinelander, Richards, Sage, Saunders, N. Sanford, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Stagg, Steele, Swift, Sylvester, Townley,

Townsend, Van Fleet, Van Ness, J. R. Van Rensselaer, Verbryck, Ward, E. Webster, Wendover, Woods, Woodward, Wooster, Young.—68.

AYES—Messrs. Beckwith, Buel, Carver, Child, Clyde, Cramer, Eastwood, Fenton, Hogeboom, Jay, Knowles, Lansing, P. R. Livingston, Nelson, Pike, Pitcher, Porter, Reeve, Rogers, Ross, R. Sanford, Schenck, Seaman, Starkweather, I. Sutherland, Taylor, Ten Eyck, Tuttle, Van Buren, Wheeler, N. Williams, Yates.—34.

COL. YOUNG offered the following proviso to the 4th clause:

"Provided, That if the election of sheriff and clerk, aforesaid, or either of them, shall be found inconvenient, the legislature may provide by law for their appointment, two thirds of the members of both houses concurring therein."

MR. SHARPE remarked, that if the regulation were found inconvenient, the constitution might be amended in the manner provided.

COL. YOUNG believed there would be no danger in entrusting the alteration to the legislature, two thirds of which would not act contrary to the public interest.

MR. WHEELER hoped no objections would be raised to a proviso which, in his opinion, was safe and judicious.

MR. SHARPE again spoke against the proviso, and remarked that similar provisos might be added to all the articles of the constitution. He could see no reason for making this provision an exception.

MR. WHEATON was decidedly opposed to leaving any thing to the legislature which could be properly fixed by the constitution. We were sent here to make a constitution, and not to refer it to the fluctuating caprice of the legislature. He had constantly voted, whenever the question came up, for the appointment of sheriffs by the supreme executive of the state, believing the office to be a ramification of the executive power. But the majority of the convention had determined otherwise, and he was content, especially as it would be a means of breaking into fragments that great mass of power and patronage which had heretofore been concentrated at the seat of government, and of dispersing it throughout the different counties, which, he was persuaded, would be attended with the most salutary consequences. He concluded with calling for the ayes and noes on the question.

MR. BURROUGHS announced his intention to vote against the proviso, and pointed out the evil consequences to which it would lead.

The question was then taken by ayes and noes, and decided in the negative, 75 to 20.

The section then passed without amendment.

Sections 9th and 10th passed as reported.

MR. TOMPKINS moved to strike out the words 'are directed to be elected'—*Carried.*

MR. FENTON moved to strike out the whole section, and leave the appointment of coroners to the direction of the legislature—*Lost.*

Sections 12th, 13th, 14th, 15th and 16th, passed without amendment.

MR. WENDOVER moved to reconsider the 4th section of the 3d article, relative to the commander of the militia and admiral of the navy.

The motion was supported by Messrs. Wendover and Radcliff, and opposed by Mr. Tompkins—*Lost.*

ARTICLE FIFTH (relative to the judiciary) was read by sections.

MR. WHEATON moved to insert after "judges of the supreme court," the words "*and district judges,*" so that these latter judges might also be members of the court of errors. He stated his object to be to infuse more law mind into that court, which was the highest tribunal in the state, and decided in the last resort on the lives, liberties, and property of the citizens. The house, by determining to reduce the number of the judges of the supreme court to three, had deprived the court of errors of two of its law members. He wished to obtain a compensation for this. By bringing the new district or circuit judges into the court of errors, we should add to its learning, and at the same time improve the character of these judges. We should raise the standard of the qualifications of the men who might aspire to a judgeship in these new courts, by exacting from them those qualifications which might be supposed to fit them for a seat in

the highest appellate tribunal. In his view, it was a serious objection to the court of errors, as now constituted, that it contained so large a preponderancy of men whose habits of life and means of education, however respectable they might be in other particulars, could not be supposed to fit them to sit in judgment to correct the errors of men who had made the study of the law the business of their whole lives.

The question was taken thereupon and lost, and the first section passed without amendment.

The second section being under consideration,

Mr. Wheaton moved to strike out the words "the assembly shall have the power of impeaching all officers of this state for misconduct in office," and to insert the following:—"The governor, lieutenant governor, and all civil officers of this state shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. The assembly shall have the power of impeachment: But," &c.

The motion was supported by Mr. King, when

Col. Young proposed a modification of the motion, by making it read, all "civil officers of this state for mal and corrupt conduct, and for high crimes and misdemeanors."

Mr. Wheaton assented, and observed that he had taken the words of his proposed amendment from the United States constitution, which was the nearest approach to a definition of the power of impeachment which he had any where met with. In certain periods of English history this power had unquestionably been abused, and perverted to the purposes of cruelty and oppression. But it was indispensably necessary to extend it further than it was carried by the constitution of 1777, which only went to try and punish public officers for official misconduct. But there might be many cases of crime which would render it wholly unfit that a public officer should remain in office, or be ever again entitled to the confidence of his country, which were entirely unconnected with official misconduct.

The question was thereupon put and carried, and the section *passed* as amended.

Section 3d passed as reported.

Mr. Birdseye moved to strike out the word "two" in the 4th section, and insert the word "three," making the number of the judges of the supreme court four instead of three.

The question was taken by ayes and noes, and decided in the negative, as follows:

NOES—Messrs. Barlow, Briggs, Brooks, Burroughs, Carpenter, Case, Child, D. Clark, R. Clarke, Clyde, Collins, Cramer, Dubois, Eastwood, Fenton, Ferris, Hallock, Hogeboom, Howe, Hunt, Hunting, Hurd, Knowles, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Park, Pike, Pitcher, President, Pumpelly, Reeve, Richards, Rockwell, Root, Ross, Russell, Sage, Sanders, R. Sanford, Schenck, Seely, Sheldon, I. Smith, R. Smith, Starkweather, Steele, Swift, Taylor, Townley, Townsend, Tuttle, Van Fleet, Van Vechten, Verbryck, E. Webster, Wheeler, Woods, Wooster, Young—63.

AYES—Messrs. Bacon, Beckwith, Birdseye, Bowman, Brinkerhoff, Buel, Carver, Duer, Dyckman, Edwards, Fairlie, Frost, Hunter, Huntington, Jay, Jones, King, Lansing, Lefferts, Munro, Nelson, Paulding, Porter, Radcliff, Rhinelander, Rogers, Rose, N. Sanford, Seaman, Sharpe, Stagg, I. Sutherland, Sylvester, Ten Eyck, Van Buren, Van Horne, J. R. Van Rensselaer, Ward, Wendover, N. Williams, Woodward, Yates—42.

The section passed as reported.

Section 5th (relative to district courts) was read.

Mr. Wheeler moved to strike out "district" wherever it occurs in the section, and insert "circuit."—Carried. And the section passed with a few verbal amendments.

Section 6th (respecting judges of county courts and recorders of cities) passed as reported.

Gen. Root offered the following amendment:

"All votes for any elective office given by the legislature, or the peple, for

the chancellor or justice of the supreme court, or circuit judge, during his continuance in his judicial office, shall be void."

Some modifications were proposed by Messrs. Tompkins and Wheeler, which not being assented to by Gen. Root, the question on the amendment was put and carried.

Mr. Wheaton moved the following as an additional section to the 5th article :

" The chancellor, the chief justice, and associate justices of the supreme court, and the several circuit judges, shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

Mr. Wheaton had hoped that some other gentleman would have made this proposition, as he had so frequently had occasion to trouble the house on the subject of the judiciary. But he felt it to be his duty to make one more effort, and he assured the Convention it should be the last, to place that most important department of the government on something like a reasonable footing of independence, as to the direct control of the other departments. He confessed that this seemed now almost impracticable, since it had been determined that the judges should be removable by the joint resolution of a bare majority of the senate and two thirds of the assembly. This was indeed a very great innovation on the ancient constitution of the state. But that constitution contained no provision that the judges should receive fixed salaries. Such a regulation had been thought necessary even in England, where the judiciary was not a co-ordinate branch of the government ; and it was contained in almost every constitution in this country, that of the union included. A celebrated writer (Mr. Constant,) whose love of liberty was as ardent as it was enlightened, had said that the independence of the judiciary was the corner stone of constitutional freedom ; and that the possibility of their removal, unless by a solemn judgment, was fatal to that independence. But if, in addition to this, they were constantly subject to the caprice of the legislature for their annual compensation, how could the judges feel that degree of freedom of action which was essential to the impartial administration of justice ? Unless it was intended to make them the mere instruments of the legislative department of the government, their compensation ought not to be liable to reduction. The governor's salary could neither be increased nor diminished. But he remained in office so short a period, that the value of money and the expenses of living could not much vary. Far different was the case of the judges, who held their offices for many years, and whose salaries might require an increase, but which could not be subject to diminution without bringing them under the complete control of the legislature.

The proposition was further supported by Messrs. King, I. Sutherland, and Buel, on the ground that the judges ought not to be left at the mercy of the legislature, as it would render them less independent ; and opposed by Messrs. Young, Briggs, and Root, on the ground that the legislature had been, and probably would be, liberal in fixing the compensation of the judges.

On motion of Mr. Wheaton, the question on the amendment was taken by ayes and noes, and decided in the negative, 70 to 26.

Mr. Ross moved to reconsider the fifth section of the fifth article, and stated his object. Lost.

Mr. Fairlie moved to rise and report. Lost.

Mr. Radcliff offered the following proposition :

" The chancellor, the justices of the supreme court, and the circuit judges, may after they shall respectively arrive to the age of sixty years, be appointed for the farther term of five years to any of the said offices. Lost.

Mr. Wheeler moved to reconsider the fourth section, relative to the number of judges of the supreme court. Motion to reconsider was lost.

Mr. Briggs moved to rise and report. Lost.

Gen. J. R. Van Rensselaer moved to reconsider the sixth section, with a view of excluding judges of the United States' courts from the same offices as

the chancellor and judges of the supreme court are excluded, by the amendment to that section. He also offered the following resolution:

Resolved, That no member of this Convention shall take, receive, or hold any appointment or office directed or established by this constitution, at any time before the first day of January, in the year 1825.

The motion to reconsider was lost.

Mr. Buel proposed a few verbal amendments to some of the sections passed over, which were adopted.

Mr. Wendover made another ineffectual motion to amend the fourth section of the third article.

The question on agreeing to the report of the committee of the whole, was put and carried.

Gen. Root, chairman of the committee appointed to draft an address, reported an address, which was read, and ordered to be printed.

The Convention then adjourned, to meet again at five o'clock this evening.

EVENING SESSION.

Col. Young moved, that the printers be directed to proceed in the printing of that part of the constitution which has been sanctioned by the Convention.

Much discussion took place, in the course of which a correspondence between the secretary of state and the comptroller, was read, by which it appeared that the comptroller did not feel himself authorized by the law calling the Convention, to pay out any monies from the treasury by the direction of the Convention.

The Convention then went into a committee of the whole, on the revision of the amended constitution—Mr. Lawrence in the chair.

Article Sixth, (relative to the oath of office,) was read, and passed without amendment.

Article Seventh, (bill of rights, and miscellaneous provisions,) was read.

On motion of Mr. King, the words " this state," in the third line of the first section, were stricken out, and the word " thereof," inserted instead of them; and the first section passed without further amendment.

Mr. Birdseye moved to amend the 2d section, by striking out the clause which prohibits the institution of new courts.

After some discussion, by the mover, and by Messrs. Young and Burroughs, the motion was put and lost, and the section passed as reported.

Section third, (free exercise of religious profession,) passed without amendment.

Section fourth, (declaring ministers of religion ineligible to office,) was read.

Mr. King thought the phrase " ministers of religion," ambiguous, and moved to strike out " religion," and insert " gospel." Carried.

Gen. Root moved to strike out the whole section, and insert the article in the present constitution.

The motion was opposed by Messrs. Buel, Briggs, and Wheaton, on the ground that the provision as amended was more concise, while it conveyed nearly the same idea; and the committee had uniformly omitted all the recitals or preambles in the old constitution, as being superfluous; and supported by Messrs. Root and Van Buren, upon the ground that the article in the existing constitution is more full and explicit; when the question on striking out and inserting was put and carried.

Mr. Birdseye offered the following proviso: " Provided, that nothing herein contained shall prevent any clergyman from being appointed to any office in any literary corporation, or to any office merely literary."

Messrs. Munro and Van Buren opposed the proviso, as being wholly unnecessary, the true exposition of the present clause not excluding clergymen from offices merely literary; and Mr. Birdseye made a few remarks in its favour, when the question was taken and lost, and the section passed as amended.

Section fifth, (requiring the militia to be armed and disciplined,) was read.

Mr. Jay moved to strike out "whatever as," and insert " which," in the fourth line, to remove an ambiguity in the sentence.

Gen. Root penned this section, and believed the phraseology sufficiently explicit. It was the language of the old constitution.

Mr. Radcliff thought there were objections to this section, as it now stands, and moved to strike out the words "as from scruples of conscience," and insert "as holding it unlawful to bear arms."

Mr. Jay then withdrew his motion, to give place to that of the gentleman from New-York, (Mr. Radcliff.) The amendment of Mr. Radcliff was discussed by Messrs. Root, Young, and Wheaton, the latter of whom insisted that the exemption ought only to apply to a sect having conscientious scruples, and not to every individual pretending such scruples; when Mr. R. withdrew his motion, and that of Mr. Jay was renewed, which was put and carried.

Mr. Jay then moved to strike out the words "of any religious denomination whatever," which was opposed by Mr. Root, and lost.

Section sixth, (writ of habeas corpus,) was read, and passed without amendment.

Section seventh, (prescribing the manner in which persons shall be answerable for crimes, &c.) was read.

Mr. Van Buren moved to strike out the whole section, as being unnecessary. The motion was seconded and supported by Mr. Sharpe, and opposed by Messrs. Buel, Radcliff, Wheaton, and Munro, when the motion on striking out was put and lost.

A motion was made by Mr. Buel, to insert after the words "private property shall not be taken for public use without just compensation," the words "to be assessed by a jury."

Some discussion took place between Messrs. Buel and Birdseye, when the question on the amendment was put and lost.

Before the question on the whole section was taken, Mr. Radcliff wished to make a few remarks on the importance of the section. He moved to insert "assault and battery, and breaches of the peace," and explained his reasons for the motion.

The motion was opposed by Messrs. N. Williams and Munro, and supported by Mr. Sheldon, when the same was put and lost, and the section passed without amendment.

Sections 8th and 9th (freedom of speech, and appropriation of public monies) were read, and passed as reported.

Section 10th (relative to the school and canal funds) was read.

Mr. Wheeler called for the ayes and noes, and explained his reasons for making the call.

Some discussion took place between Messrs. Van Buren, Ward, Birdseye, and Radcliff.

Mr. Wheeler moved to strike out the words, "or lands which may hereafter belong to the state."

Another debate ensued, in which Messrs. Van Buren, King, Jay, Young, Tompkins, J. R. Van Rensselaer, and Radcliff, took part, and in which the state of the property appropriated to the school fund, was explained, when the question was taken by ayes and noes, and decided in the affirmative, 52 to 47, as follows:

AYES—Messrs. Bacon, Beckwith, Birdseye, Brinkerhoff, Brooks, Burroughs, Child, Clyde, Cramer, Duer, Eastwood, Fairlie, Hallock, Hogeboom, Howe, Hunt, Hunting, Huntington, Hurd, Jones, Lansing, P. R. Livingston, Millikin, Nelson, Pike, Pitcher, Reeve, Richards, Rockwell, Rogers, Rose, Russell, Sanders, R. Sandford, Seaman, I. Smith, Steele, I. Sutherland, Ten Eyck, Townley, Van Buren, Van Horne, Van Ness, J. R. Van Rensselaer, Van Vechten, Ward, E. Webster, Wheeler, N. Williams, Woods, Woodward, Yates—52.

NOES—Messrs, Baker, Barlow, Briggs, Buel, Carver, D. Clark, Collins, Dubois, Edwards, Fenton, Frost, Hunter, Jay, King, Knowles, Lefferts, A. Livingston, M'Call, Moore, Munro, Park, Paulding, Porter, President, Pumpelly, Radcliff, Rhinelander, Ross, Sage, N. Sanford, Schenck, Seely, Sharpe, Sheldon, R. Smith, Stagg, Starkweather, D. Sutherland, Swift, Sylvester, Taylor, Tuttle, Van Fleet, Verbryck, Wendover, Wheaton, Young—47.

Mr. Jay moved to insert, so as to read, all lands belonging to the state, or which may hereafter be purchased of the Indians residing within the same. Lost.

Sections 11th and 12th, (prohibiting lotteries, and purchases of lands from Indians) passed as reported.

Section 13th (relative to the common law) was read.

Mr. Buel moved to strike out the words, " of England." Carried ; and the section passed.

Section 14th (relative to grants by the crown previous to the revolution, and to grants of lands and charters by the state since the revolution, was read, and passed with one or two verbal amendments.

Article Eighth (future amendments) was read, and passed as reported.

Article Ninth, (prescribing the time when this constitution shall go into operation, and when the first general election shall be held) was read.

Mr. Buel moved to amend the section by striking out the words " but such parts of the same as respects the right of suffrage, and the elections to be held on the first Monday of November in the year last mentioned, shall take effect on that day," and insert the following :

" But the provisions respecting the apportionment of senators and members of assembly, the right of suffrage—and the elections to be held pursuant to the provisions of this constitution shall take effect on the day of February, in the year 1822."

Some discussion took place, when the section, on motion of Mr. Van Buren, was postponed till to-morrow.

Section second was also postponed, and the committee rose, reported progress, and asked leave to sit again.

Mr. Sharpe moved that the question be taken on agreeing to the committee of the whole.

Mr. Radcliff offered the following amendment to the tenth section of the seventh article ; after the word " state," in the second line, insert the words, " and the net proceeds of all lands which may hereafter be purchased of the Indians therein."

The question on the amendment was put and lost.

Mr. Van Buren offered the following resolution :

" *Resolved,* That the committee of which Mr. N. Sanford is chairman, be instructed to prepare and report an ordinance, distinct from the constitution, providing for the election in November 1822, and the observance at such election of the right of suffrage, and division of the state into senatorial districts, and the apportionment of the members of assembly, which may be made by the legislature at their next session."

Gen. Root remarked, that the gentleman from Otsego was premature in offering his resolution, as the question on the parts of the report which passed in committee of the whole, had not been agreed to by the Convention.

Mr. Van Buren withdrew his resolution, and the report of the committee of the whole was agreed to.

The ninth article was referred to the committee of which Mr. N. Sanford is chairman.

On motion of Mr, Wheaton, the committee of which Mr. N. Sanford is chairman, was excused from the duty of superintending the printing of the new constitution, and a committee of three, consisting of Messrs. Fairlie, Van Ness and Young, was appointed. Adjourned to 10 o'clock to-morrow morning.

FRIDAY, NOVEMBER 9, 1821.

The Convention met, pursuant to adjournment, and the minutes of yesterday were read and approved.

The committee, of which Mr. N. Sanford is chairman, made the following report on the ninth article, which was last evening referred back to the said committee :—

ARTICLE NINTH.

Sec. 1. This constitution shall be in force from the last day of December, in the year one thousand eight hundred and twenty-two. But all those parts of the same, which relate to the right of suffrage; the division of the state into senate districts; the number of members of the assembly to be elected, in pursuance of this constitution; the apportionment of members of assembly; the elections hereby directed to commence on the first Monday in November, in the year 1822; and the continuance of the members of the present legislature in office until the first day of January, in the year 1823, shall be in force and take effect from the last day of February next. The members of the present legislature shall, on the first Monday of March next, take and subscribe an oath or affirmation to support this constitution, so far as the same shall then be in force. Sheriffs, clerks of counties, and coroners, shall be elected at the election hereby directed to commence on the first Monday of November, in the year 1822; but they shall not enter on the duties of their offices before the first day of January next following.

Sec. 2. The existing laws, relative to the manner of notifying, holding, and conducting elections, making returns, and canvassing votes, shall be in force, and observed, in respect to the elections hereby directed to commence on the first Monday of November, in the year 1822, so far as the same are applicable. And the present legislature shall pass such other and further laws as may be requisite for the execution of the provisions of this constitution, in respect to elections.

The report was read, and ordered to be printed.

On motion of Mr. Sharpe, ordered, that John De Witt be recognized as an attendant on this Convention.

Col. Young called for the consideration of the address to the people of the state of New-York, reported by the committee of which Mr. Root is chairman.

Before this motion was acted on, Mr. Wheaton moved that the committee, of which Mr. Fairlie is chairman, be directed to superintend the engrossing of the constitution, which was carried.

On motion of Mr. Fairlie, it was ordered that the members of this Convention sign the constitution, as agreed to in this Convention, at any time previous to the third Tuesday in January next, and that the same be attested by the secretaries.

Mr. Munro moved to reconsider the fourth section of the fifth article, with a view to provide that a majority of the supreme court shall constitute a quorum. The motion to reconsider prevailed.

Sundry amendments were proposed, and some discussion took place between Messrs. Munro, Root, Young, N. Williams, Buel, Radcliff, Wheaton, Fairlie, and Briggs, when, on motion of Mr. Wheaton, the words "any of whom may hold a court," were added to the end of the section.

Mr. Wheeler offered the following resolution:

'*Resolved*, That the printers to the state be directed to designate the amended parts of the constitution from the original parts of it, either by printing the one part in *italics*, or noting the distinction in such manner, that the people may distinguish the amendments from the original.'

Mr. Buel remarked, that it would be impossible to carry the resolution into effect, as the gentleman from Washington would see by looking for a moment at the amended constitution.

Mr. Wheaton also remarked, that so many alterations of phraseology had been made by the select committee, both in the old constitution and the amendments, that it would be utterly impossible to distinguish the parts of the old which had been retained. The only mode of giving the desired information would be to publish the old and new constitutions in parallel columns.

The resolution was withdrawn.

Mr. Fairlie made some inquiries as to the caption or title of the constitution, when it was agreed, that in the engrossed copy the caption should be "The Constitution of the State of New-York;" and in the 5000 copies which shall go forth to the people, the caption shall be "*The Constitution of the state of New-York, as amended.*"

The convention then went into committee of the whole, on the report of the committee of which Mr. N. Sanford is chairman, being the 9th article—Mr. Lawrence in the chair.

Gen. Root moved to strike out the last clause of the first section, and insert the following:

'The commissions of all persons holding civil offices on the last day of December, 1822, shall expire on that day.'

Some discussion took place between Messrs. Root, Buel, Wheaton, and Tompkins, when the motion on striking out and inserting was put and carried.

Mr. Wheaton moved to insert after the word 'twenty three' (1823) in the 14th line the following words:

'The prohibition against authorising lotteries, the prohibition against appropriating the public monies or property or creating, continuing, altering or renewing any body politic or corporate without the assent of two third of the members elected to each branch of the legislature.'

Mr. W. remarked that he feared the limitations upon the legislative power, contained in the 9th and 11th articles of the amended constitution, would not prove effectual, unless they were applied to the present legislature. But as the returns and canvass of the votes for or against the constitution would not be made before the latter part of February, it would be impossible to apply those restrictions to the existing legislature until that time.

He observed in the newspapers a great number of applications for new banks, and other monied incorporations, and apprehended that, if some check was not applied, a scene dishonourable to the character and fatal to the interests of the state would be exhibited at the ensuing session of the legislature. Past experience furnished an instructive lesson on this subject, by which we ought to profit.

Col. Young wished that the amendment might be modified by leaving out the prohibition concerning lotteries.

Mr. Sharpe opposed the modification, when the question on the amendment as modified was taken and carried.

Mr. Sharpe then moved to include the prohibitions with regard to lotteries, which was also carried.

After a few other verbal alterations, the first section passed as amended.

Section second was read and agreed to as reported, which completed the amended constitution.

The next question in order was the address reported by Mr. Root, which was adopted with a few verbal amendments, as follows:

To the People of the State of New-York.

The delegates of the people, in convention, having this day terminated their deliberations, present to you the constitution of the state in an amended form, as the result of the arduous and responsible duties which your confidence has imposed upon them. They have adopted this course from a sense of the great difficulty, if not impracticability, of submitting to the people, for their ratification, in separate articles, the various amendments which have been adopted by majorities of the convention. This difficulty is very much increased by the reflection that the adoption of some articles, and the rejection of others, might greatly impair the symmetry of the whole. The convenience of having the amendments incorporated with those parts of the constitution which are to remain unaltered, will readily be perceived. We, therefore, submit to the people the choice between the old and the amended constitutions.

That differences of opinion should exist among individuals, on the various topics which have passed in review before us, will not excite surprise. Various local interests, and diversity of political sentiments, among a free people, will of necessity lead to different opinions. Probably, the amended constitution, now submitted, is not, in all its provisions, in exact accordance with the desires of any individual member of the convention; but in the spirit of mutual concession and compromise, we have come to a result, which we hope the people, actuated by the same spirit, will approve and ratify. We, therefore, submit it to your investigation

reflection, and final decision, with the most respectful deference; and do most devoutly implore the Supreme Ruler of the universe, that he will perpetuate the blessings of rational liberty, and endue us plenteously with that wisdom from above, which is profitable to direct us in all things.

The committee then rose and reported, without asking leave to sit again.

In Convention—The report of the committee of the whole was agreed to, and the report was ordered to lie on the table.

Mr. Edwards moved to reconsider the 4th section of the 5th article, with the view of amending the section, by making the number of justices of the supreme court four instead of three. In support of his motion, he spoke at considerable length, and contended that one additional justice would give dignity to the bench, with very little expense to the state.

The motion was seconded by Mr. Wheeler, who thought the court would be greatly improved by the addition of another justice.

Col. Young would agree to the proposition, if modified so as to leave it discretionary with the legislature to add another judge, should it be found that the public good required it; and he offered a proviso to that effect:

Mr. Edwards would assent to the modification, if it would better meet the views of gentlemen.

The motion to reconsider prevailed, and Mr. Edward's proposition was modified, so as to read as follows:

" And if hereafter in the opinion of the legislature, the public good shall require the appointment of an additional justice, and if provision be made by them for the payment of his salary, then one other justice may be appointed for the supreme court."

Gen. Root opposed the proposition in *toto*. If one legislature should think that the public good required an addi ional judge, and should one be appointed, he would hold under a tenure which could not be touched by subsequent legislatures; and thus the state would be saddled with a superfluous justice, with no way of getting rid of him.

Col. Young remarked, that the legislature would hold the keys of the treasury, and if the additional justice should be appointed, and afterwards found unnecessary, he could be starved out of office.

Gen. Root regretted that the gentleman from Saratoga (Col. Young) should at this late hour of the session enlist in support of such a proposition, however it might be modified. It was merely making provision for some candidate for a judgeship. If the legislature should find that another justice was required, the constitution provided for an amendment in a regular way.

Mr. Wheaton read from the address, reported by the gentleman from Delaware, (Mr. Root) a clause, which inculcated mutual concession and compromise, and hoped these sentiments would be exemplified in the present instance.

In order to test the disposition of the friends of the judiciary scheme which had been adopted by a majority of the house, he called for the ayes and noes.

The proposition was further discussed by Messrs. Buel and Radcliff, when the question on Mr. Edwards' amendment was taken by ayes and noes, and decided in the negative, 50 to 41, as follows:

NOES—Messrs. Baker, Barlow, Briggs, Brooks, Burroughs, Carpenter, Case, Child, Collins, Cramer, Dubois, Eastwood, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Hunt, Hunting, Knowles, A. Livingston, P. R. Livingston, M'Call, Moore, Pike, Reeve, Richards, Rockwell, Root, Russell, Sage, Sanders, R. Sandford, Seely, Sharpe, Sheldon, Starkweather, Steele, Swift, Taylor, Townsend, Tuttle, Van Fleet, Verbryck, E. Webster, Woods, Wooster, Young—50.

AYES—Messrs. Bacon, Beckwith, Birdseye, Bowman, Buel, Carver, Duer, Dyckman, Edwards, Fairlie, Hunter, Huntington, Jay, Jones, King, Lansing, Lawrence, Munro, Nelson, Paulding, Pitcher, Radcliff, Rhinelander, Rose, Ross, N. Sanford, Seaman, I. Smith, R. Smith, Stagg, I. Sutherland, Ten Eyck,

Van Buren, Van Horne, Ward, Wendover, Wheeler, N. Williams, Woodward, Yates—41.

Mr. Edwards then moved the proviso as offered by Col. Young.

On this proposition another long debate ensued, in which Messrs. King, Cramer and Root participated.

Mr. Fairlie offered the following modification to Col. Young's proposition, which was withdrawn :

' But an additional justice of the supreme court may be appointed when the legislature shall by law so direct, two thirds of the members elected to the senate and assembly agreeing thereto."

Mr. Edwards again took the floor, and spoke for some time in reply to the gentleman from Delaware, and in favour of increasing the number of judges. The gentleman from Delaware appeared from some cause to have a strong antipathy to courts of justice. Courts were instituted for the protection of the innocent, and for scourging the guilty. He quoted the couplet from M'Fingal,

" No man e'er felt the halter draw,
With good opinion of the law."

and hoped the gentleman's repeated declamation against courts did not proceed from such feelings.

Mr. Briggs. The gentleman from New-York last up (Mr. Edwards) has very frankly informed the house, that the members of the legal profession, can have no personal interest in the decision of the question before us. He tells us that the organization of your courts which would be most beneficial to the people, would be the worst possible organization for the lawyers, and *vice versa*. That the organization most beneficial to the lawyers, would be the worst possible arrangement for the people. Philosophers have demonstrated, and all experience proves, man to be a selfish being. And the fact is before our eyes, that the proposition upon your table was introduced by a gentleman of the bar, and is supported with an uncommon zeal by the whole body of lawyers in the Convention. The inference from these premises is irresistible, that the project upon your table is the very worst that can be devised, as regards the interests of the people. I hope that those members of the Convention whose interests are not so diametrically opposed to those of the people, will pause before they consent to adopt a proposition which is mathematically demonstrated from the very principles laid down by its advocates, to be the most deleterious imaginable.

Mr. Edwards hoped the gentleman from Schoharie did not consult his own breast in drawing such an inference.

Mr. Wheeler regretted to see such a want of magnanimity and good feeling at the close of the session, when we were about to part, perhaps to meet no more.

The proposition was farther opposed by Mr. Hogeboom, and supported by Mr. Burroughs.

Gen. Root again occupied the floor for some time in opposition to the proposition, and in urging the objections which had been already suggested. There was no court in the United States with four judges, and gentlemen were obliged to cross the Atlantic for precedents. He replied to the gentleman from New-York, (Mr. Edwards,) and thanked him for the polite quotation from M'Fingal.

Mr. Fairlie made a few remarks, when the question on the proviso was taken by ayes and noes, and decided in the negative, as follows :

NOES.—Messrs. Barlow, Briggs, Brooks, Carpenter, Case, Child, D. Clarke, Collins, Dubois, Eastwood, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Hunt, Hunting, Hurd, Knowles, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Park, Pike, Pitcher, Porter, Reeve, Richards, Rockwell, Root, Rosebrugh, Russell, Sage, Sanders, R. Sanford, Schenck, Seely, Sharpe, Sheldon, Starkweather, Steele, Swift, Taylor, Townley, Townsend, Tuttle, Van Fleet, Verbryck, E. Webster, Woods, Wooster.—54.

AYES.—Messrs. Bacon, Baker, Beckwith, Birdseye, Bowman, Brinkerhoff, Buel, Burroughs, Carver, Clyde, Cramer, Duer, Dyckman, Edwards, Fairlie, Hunter, Huntington, Jay, Jones, King, Lansing, Lawrence, Munro, Nelson,

Paulding, Pumpelly, Radcliff, Rhinelander, Rogers, Rose, Ross, N. Sanford, Seaman, I. Smith, R. Smith, Stagg, I. Sutherland, Sylvester, Ten Eyck, Van Buren, Ward, Wendover, Wheaton, Wheeler, N. Williams, Woodward, Yates, Young.—48.

Much colloquial discussion took place as to the hour of adjournment, when, on motion, it was decided to adjourn to 9 o'clock to-morrow morning.

Adjourned.

SATURDAY, NOVEMBER 10, 1821.

The convention assembled pursuant to adjournment, and the journals of yesterday were read and approved.

Mr. Fairlie, from the committee directed to superintend the engrossing of the amended constitution, made report that the said committee had performed the duties assigned them, and had carefully and diligently compared the said engrossed copy with the original, and found the same to be correct. He thereupon presented the same, which was read by the secretary.

After the constitution was read as engrossed,

Mr. Fairlie stated that there was no notice taken of the court of probates, which was to be found in the old constitution. It was an important court, which had long subsisted in the state, and he submitted to the Convention, whether some provision ought not to be made on the subject, or whether it was to be considered as virtually abolished, or subject to the control of the legislature, by the silence of the amended constitution in respect to it?

Gen. Root and Col. Young could see no necessity of a rider to the engrossed constitution for this purpose. The court of probates would subsist, but would of course be liable to regulation, or even to be abolished by the legislature.

Mr. Radcliff suggested that the work of the Convention would be left quite imperfect unless some express declaration was made on the subject. He offered an amendment providing expressly for its abolition. Either such an amendment must be incorporated into the new constitution, or a clause should be added to repeal and abrogate the old, which he wished to avoid, as it might be attended with some inconveniencies.

Mr. Buel denied that either the one or the other was necessary. The select committee had carefully examined the journals, and could not find that any vote had passed either in committee of the whole, or the house, to abolish this court. They had not enumerated it among the courts recognized in the new constitution, because it was desirable to leave the legislature a discretion to transfer its powers to some other tribunal. The court of chancery had been mentioned as most fit to exercise the appellate jurisdiction of the present court of probates, and perhaps the surrogates in the cities of New-York and Albany might be conveniently vested with its power of granting foreign administration.

Mr. Wheaton hoped that no clause would be added to the amended constitution, repealing that of 1777. Such a clause would require more consideration than could be given to it at this late period of the session. It might be safely left to the operation of that rule of universal jurisprudence, by which subsequent laws repeal those previously enacted, so far as they come within the purview of the former. It was a rule applicable to treaties as forming a part of the law of nations, to constitutions of government and to municipal statutes. But if the constitution of 1777 was to be expressly abrogated, the repealing article must be guarded by a saving clause of vested rights and of penalties incurred, which would require considerable care in the drafting, and after all such, a repeal might be attended with consequences which could not be foreseen, and which might even defeat the intentions of the Convention. It was, therefore, better to leave it to construction how far any of its provisions might be still considered as in force, so far as to require legislative provisions. If it should be thought fit to re-organize the court of probates, it could be done; because,

although proceeding according to the course of the civil and canon law, it was not a *new* court; or it might be abolished, and its powers transferred to some other tribunal.

The engrossed constitution having been read the third time, the President rose and asked—" SHALL THIS CONSTITUTION PASS?"

The ayes and noes having been required upon the final passage thereof, and the name of the first member upon the catalogue having been called by the secretary,

MR. BACON rose and said—That he was sensible that this was not the proper time for exhibiting our respective views of the great question now put to us, in any thing which bore the character of a formal speech, and he was not indiscreet enough to offer himself to the Convention with that view. In the situation in which he stood, he asked only to be indulged with stating with great brevity one or two prevailing considerations which had influenced the decision to which he had come.

That with most of those now around him, he could undoubtedly say, that this was by far the most solemn and important vote, as to its character, which he had ever been called upon to record on the journals of his country, so for himself, he would not conceal that it was one which had subjected him to much more serious embarrassment, as to the result to which, from the highest considerations of public duty, he ought finally to come.

That the constitution which we were now about to submit to the people of the state, was not by any means such an one as, in reference merely to its own merits, met with his approbation, or as the people had a right to expect of this Convention, he did not hesitate to avow as his deliberate opinion. He would not now even glance at those detailed considerations on which this opinion was founded. But situated as we were, there was now left both to us and to the people but a choice of alternatives, and that was between the existing system of government, confessedly and experimentally bad and defective as it was, both in relation to many of its organizations, and its practical operation upon the peace, the welfare, and the best interests of the state.

In some, and those pretty important respects, he did most firmly believe that the system proposed was by no means an improvement, but on the other hand, clearly worse than that which now existed. The occasion would not permit him even to allude to the particular parts which in his judgment justified him in this conclusion. In other important respects, he was as free to acknowledge that the plan now before us contained material improvement upon the old one, as to the organization and distribution of the great powers of government: and in most of its subordinate details, that it was decidedly superior.

If he confined his views, therefore, only to the prominent and permanent provisions of both, he should perhaps be inclined to conclude that the good and bad features of each were not very unequally balanced; and were it not for one provision, which formed a part of the new system, but was altogether wanting in the old one, (and which he could have wished had been separately proposed to the people,) he might, perhaps, have thought it his duty to vote against it altogether; and that was the provision for future amendments, which afforded to the people a means of correcting what we had done amiss, and of curing its present and future defects with reasonable facility, without resorting to the difficult and dangerous experiment of a formal Convention, which no man he believed, would wish again to see take place, so long as the acknowledged evils of our present system were at all tolerable. And with this means of setting right whatever had been hastily or unadvisedly sanctioned here, in the hands of the people, he consented, not without much doubt and hesitation, to submit our whole work to their judgment and consideration, leaving even his own judgment open to conviction and reconsideration on that last appeal, should better and more mature counsels convince him that he ought so to do; to that decision he should endeavour cheerfully to submit, cherishing, he believed, as few personal hopes or expectations, from any state of things which might grow out of it, as any man within the reach of his voice. Such was the best result of a course of reflection as serious and unprejudiced as he had ever, on any occasion whatever, been called upon to make with himself, and which terminated in the affirmative vote which he was now prepared to give.

The further call of the ayes and noes having been completed, the question on the final passage of the revised constitution as engrossed was then decided in the affirmative, as follows:

AYES—Messrs. Bacon, Baker, Barlow, Beckwith, Birdseye, Bowman, Briggs, Brinkerhoff, Brooks, Buel, Burroughs, Carpenter, Carver, Case, Child, D. Clark, Clyde, Collins, Cramer, Dubois, Duer, Dyckman, Eastwood, Edwards, Fairlie, Fenton, Ferris, Frost, Hallock, Hogeboom, Howe, Hunt, Hunter, Hunting, Huntington, Hurd, King, Knowles, Lansing, Lawrence, Lefferts, A. Livingston, P. R. Livingston, M'Call, Millikin, Moore, Munro, Nelson, Park, Paulding, Pike, Pitcher, Porter, Pumpelly, Radcliff, Reeve, Richards, Rockwell, Rogers, Root, Rose, Rosebrugh, Sage, N. Sanford, R. Sandford, Schenck, Seely, Sharpe, Sheldon, I. Smith, R. Smith, Stagg, Starkweather, Steele, Southerland, Swift, Taylor, Ten Eyck, Townley, Townsend, Tuttle, Van Buren, Van Fleet, Verbryck, Ward, E. Webster, Wendover, Wheaton, Wheeler, N. Williams, Woods, Woodward, Wooster, Yates, Young—98.

NOES—Messrs. Jay, Jones, Rhinelander, Sanders, Sylvester, Van Horne, Van Ness, Van Vechten—9.

The said engrossed constitution was thereupon signed, pursuant to the resolve of yesterday to that effect, by the President of the Convention and by ninety-eight of the delegates present, and attested by the secretaries.

The address to *the People of the State of New-York*, reported yesterday by the committee of which Mr. Root was chairman, was then read and *carried*, and thereupon

Ordered, That the same be signed by the President of the Convention and attested by the secretaries, and filed in the office of the secretary of state, and that 5000 copies thereof be transmitted to the clerks of the respective counties in this state, and also two copies thereof be transmitted to each of the members of this convention.

Mr. Fairlie moved a resolution that the secretary of state be directed to examine and compare the printed copies of the constitution as agreed to in this convention, with the engrossment thereof filed in the office of the secretary of state, and that he certify the same under his official signature.

Mr. N. Sanford offered the following resolution:

Resolved, That the thanks of this convention be given to the honourable Daniel D. Tompkins, the president thereof, for his able, faithful, and impartial discharge of the duties of that station during the session of this convention.

The question was then put by the Secretary, and *carried unanimously*.

The President then rose and addressed the convention as follows:—

"Gentlemen, I am penetrated with a due sense, not only of the honour conferred by your selection of me to preside in this highly respectable body—but also of your kindness and regard manifested by the unanimous resolution which you have been pleased to adopt at the close of the solemn duties which the people have committed to us.

"It is my sincere hope that the approbation of this community may crown the result of our consultations, and that it may accomplish the momentous objects for which we have been assembled, and redound to the liberty, tranquillity, and permanent welfare of our constituents, and of posterity.

"Whilst I tender to you an affectionate adieu, indulge me, gentlemen, in a fervent expression of my acknowledgments for your uniform support and approbation, and of my best wishes for your respective happiness and prosperity."

Sundry orders and resolutions were then passed, providing for the payment of services rendered to the convention, and the journals of this day were read and completed—whereupon, on motion of

Mr. Russell, it was resolved that this Convention do now adjourn; and the same was thereupon ADJOURNED accordingly, *sine die*.

Address of the Delegates in Convention,

TO THEIR CONSTITUENTS.

IN CONVENTION,

ALBANY, *November* 10, 1821.

The Delegates of the people, in Convention, having this day terminated their deliberations, present to you the constitution of the state, in an amended form, as the result of the arduous and responsible duties which your confidence has imposed upon them. They have adopted this course, from a sense of the great difficulty, if not impracticability, of submitting to the people, for their ratification, in separate articles, the various amendments which have been adopted by majorities of the Convention. This difficulty is very much increased, by the reflection, that the adoption of some articles, and the rejection of others, might greatly impair the symmetry of the whole. The convenience of having the amendments incorporated with those parts of the constitution which are to remain unaltered, will readily be perceived. We, therefore, submit to the people, the choice between the old, and the amended constitution.

That difference of opinion should exist among individuals, on the various topics which have passed in review before us, will not excite surprise. Various local interests, and diversity of political sentiment, among a free people, will, of necessity, lead to different opinions. Probably, the amended constitution, now submitted, is not, in all its provisions, in exact accordance with the desires of any individual member of the Convention; but in the spirit of mutual concession and compromise, we have come to a result, which we hope the people, actuated by the same spirit, will approve and ratify. We, therefore, submit it to your investigation, reflection, and final decision, with the most respectful deference; and do most devoutly implore the Supreme Ruler of the universe, that he will perpetuate the blessings of rational liberty, and endue us plenteously with that wisdom from above, which is profitable to direct in all things.

By order of the Convention,

DANIEL D. TOMPKINS, *President,*
and Delegate from Richmond County.

JOHN F. BACON, }
SAMUEL S. GARDINER, } *Secretaries.*

STATE OF NEW-YORK—SECRETARY'S OFFICE,
Albany, November 10, 1821.

I certify the preceding, to be a true copy of the address of the delegates assembled in Convention, and filed in this office, this day.

J. V. N. YATES, *Secretary of State.*

THE

CONSTITUTION

OF THE

STATE OF NEW-YORK,

AS AMENDED.

WE, the people of the state of New-York, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our form of government, do establish this constitution.

ARTICLE FIRST.

Sec. I. The legislative power of this state, shall be vested in a senate and an assembly.

Sec. II. The senate shall consist of thirty-two members. The senators shall be chosen for four years, and shall be freeholders. The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

Sec. III. A majority of each house, shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each house shall choose its own officers; and the senate shall choose a temporary president, when the lieutenant-governor shall not attend as president, or shall act as governor.

Sec. IV. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house, shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Sec. V. The state shall be divided into eight districts, to be called senate districts, each of which shall choose four senators.

The first district, shall consist of the counties of Suffolk, Queens, Kings, Richmond, and New-York.

The second district, shall consist of the counties of Westchester, Putnam, Dutchess, Rockland, Orange, Ulster, and Sullivan.

The third district, shall consist of the counties of Greene, Columbia, Albany, Rensselaer, Schoharie, and Schenectady.

The fourth district, shall consist of the counties of Saratoga, Montgomery, Hamilton, Washington, Warren, Clinton, Essex, Franklin, and St. Lawrence.

The fifth district, shall consist of the counties of Herkimer, Oneida, Madison, Oswego, Lewis, and Jefferson.

The sixth district, shall consist of the counties of Delaware, Otsego, Chenango, Broome, Cortland, Tompkins, and Tioga.

The seventh district, shall consist of the counties of Onondaga, Cayuga, Seneca, and Ontario.

The eighth district, shall consist of the counties of Steuben, Livingston, Monroe, Genesee, Niagara, Erie, Allegany, Cattaraugus, and Chautauque.

And as soon as the senate shall meet, after the first election to be held in pursuance of this constitution, they shall cause the senators to be divided by lot, into four classes, of eight in each, so that every district shall have one senator of each class; the classes to be numbered, one, two, three, and four. And the seats of the first class, shall be vacated at the end of the first year; of the second class, at the end of the second year; of the third class, at the end of the third year; of the fourth class, at the end of the fourth year; in order that one senator be annually elected in each senate district.

Sec. VI. An enumeration of the inhabitants of the state, shall be taken, under the direction of the legislature, in the year one thousand eight hundred and

twenty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of colour not taxed; and shall remain unaltered, until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senate district.

SEC. VII. The members of the assembly, shall be chosen by counties, and shall be apportioned among the several counties of the state, as nearly as may be, according to the numbers of their respective inhabitants, excluding aliens, paupers, and persons of colour not taxed. An apportionment of members of assembly, shall be made by the legislature, at its first session after the return of every enumeration; and when made, shall remain unaltered until another enumeration shall have been taken. But an apportionment of members of the assembly, shall be made by the present legislature, according to the last enumeration, taken under the authority of the United States, as nearly as may be. Every county heretofore established, and separately organized, shall always be entitled to one member of the assembly; and no new county shall hereafter be erected, unless its population shall entitle it to a member.

SEC. VIII. Any bill may originate in either house of the legislature; and all bills passed by one house, may be amended by the other.

SEC. IX. The members of the legislature, shall receive for their services, a compensation to be ascertained by law, and paid out of the public treasury; but no increase of the compensation shall take effect, during the year in which it shall have been made. And no law shall be passed, increasing the compensation of the members of the legislature, beyond the sum of three dollars a day.

SEC. X. No member of the legislature, shall receive any civil appointment from the governor and senate, or from the legislature, during the term for which he shall have been elected.

SEC. XI. No person, being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, while a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

SEC. XII. Every bill which shall have passed the senate and assembly, shall, before it become a law, be presented to the governor: If he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present, shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members present, it shall become 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, and against, the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

SEC. XIII. All officers holding their offices during good behaviour, may be removed by joint resolution of the two houses of the legislature, if two-thirds of all the members elected to the assembly, and a majority of all the members elected to the senate, concur therein.

SEC. XIV. The political year shall begin on the first day of January; and the legislature shall every year assemble on the first Tuesday of January, unless a different day shall be appointed by law.

SEC. XV. The next election for governor, lieutenant-governor, senators, and members of assembly, shall commence on the first Monday of November, one thousand eight hundred and twenty-two; and all subsequent elections, shall be held at such time, in the month of October, or November, as the legislature shall by law provide.

Sec. XVI. The governor, lieutenant-governor, senators, and members of assembly, first elected, under this constitution, shall enter on the duties of their respective offices, on the first day of January, one thousand eight hundred and twenty-three; and the governor, lieutenant-governor, senators, and members of assembly, now in office, shall continue to hold the same, until the first day of January, one thousand eight hundred and twenty-three, and no longer.

ARTICLE SECOND.

Sec. I. Every male citizen, of the age of twenty-one years, who shall have been an inhabitant of this state one year preceding any election, and for the last six months a resident of the town or county where he may offer his vote; and shall have within the year next preceding the election, paid a tax to the state or county, assessed upon his real or personal property; or shall by law be exempted from taxation; or being armed or equipped according to law, shall have performed within that year, military duty in the militia of this state; or who shall be exempted from performing military duty in consequence of being a fireman in any city, town, or village in this state; and also, every male citizen of the age of twenty-one years, who shall have been, for three years next preceding such election, an inhabitant of this state; and for the last year, a resident in the town or county, where he may offer his vote; and shall have been within the last year, assessed to labour upon the highways, and shall have performed the labour, or paid an equivalent therefor, according to law; shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people: But no man of colour, unless he shall have been for three years a citizen of this state, and for one year next preceding any election, shall be seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon; and shall have been actually rated, and paid a tax thereon, shall be entitled to vote at such election. And no person of colour shall be subject to direct taxation, unless he shall be seised and possessed of such real estate as aforesaid.

Sec. II. Laws may be passed, excluding from the right of suffrage, persons who may have been, or may be convicted of infamous crimes.

Sec. III. Laws shall be made for ascertaining by proper proofs, the citizens who shall be entitled to the right of suffrage, hereby established.

Sec. IV. All elections by the citizens, shall be by ballot, except for such town officers, as may by law be directed to be otherwise chosen.

ARTICLE THIRD.

Sec. I. The executive power shall be vested in a governor. He shall hold his office for two years; and a lieutenant-governor shall be chosen at the same time, and for the same term.

Sec. II. No person, except a native citizen of the United States, shall be eligible to the office of governor; nor shall any person be eligible to that office, who shall not be a freeholder, and shall not have attained the age of thirty years, and have been five years a resident within this state; unless he shall have been absent during that time, on public business of the United States, or of this state.

Sec. III. The governor and lieutenant governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant governor, the two houses of the legislature, shall by joint ballot, choose one of the said persons so having an equal and the highest number of votes, for governor, or lieutenant governor.

Sec. IV. The governor shall be general and commander in chief of all the militia, and admiral of the navy of the state. He shall have power to convene the legislature, (or the senate only) on extraordinary occasions. He shall communicate by message to the legislature at every session, the condition of the state: and recommend such matters to them as he shall judge expedient. He

shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished, during the term for which he shall have been elected.

Sec. V. The governor shall have power to grant reprieves and pardons after conviction, for all offences, except treason and cases of impeachment. Upon convictions for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting; when the legislature shall either pardon, or direct the execution of the criminal, or grant a farther reprieve.

Sec. VI. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor, for the residue of the term, or until the governor absent or impeached, shall return, or be acquitted. But when the governor, shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall still continue cammander in chief of all the military force of the state.

Sec. VII. The lieutenant governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate, shall act as governor, until the vacancy shall be filled, or the disability shall cease.

ARTICLE FOURTH.

Sec. I. Militia officers shall be chosen, or appointed, as follows: Captains, subalterns, and non-commissioned officers, shall be chosen by the written votes of the members of their respective companies. Field officers of regiments, and separate battalions, by the written votes of the commissioned officers of the respective regiments, and separate battalions. Brigadier generals, by the field officers of their respective brigades. Major generals, brigadier generals, and commanding officers of regiments or separate battalions, shall appoint the staff officers of their respective divisions, brigades, regiments, or separate battalions.

Sec. II. The governor shall nominate, and with the consent of the senate, appoint all major generals, brigade inspectors, and chiefs of the staff departments, except the adjutant general, and commissary general. The adjutant general shall be appointed by the governor.

Sec. III. The legislature, shall by law, direct the time and manner of electing militia officers, and of certifying their elections to the governor.

Sec. IV. The commissioned officers of the militia, shall be commissioned by the governor; and no commissioned officer shall be removed from office, unless by the senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court martial, pursuant to law. The present officers of the militia shall hold their commissions subject to removal as before provided.

Sec. V. In case the mode of election and appointment of militia officers hereby directed, shall not be found conducive to the improvement of the militia, the legislature may abolish the same, and provide by law for their appointment, and removal, if two thirds of the members present in each house. shall concur therein.

Sec. VI. The secretary of state, comptroller, treasurer, attorney-general, surveyor-general, and commissary-general, shall be appointed as follows: The senate and assembly shall each openly nominate one person for the said offices respectively: After which, they shall meet together, and if they shall agree in their nominations, the persons so nominated shall be appointed to the office for which he shall be nominated. If they shall disagree, the appointment shall be made by the joint ballot of the senators, and members of assembly. The treasurer shall be chosen annually. The secretary of state, comptroller, attorney-general, surveyor-general, and commissary-general, shall hold their offices for

three years, unless sooner removed by concurrent resolution of the senate and assembly.

Sec. VII. The governor shall nominate, by message, in writing, and with the consent of the senate, shall appoint all judicial officers, except justices of the peace, who shall be appointed in manner following; that is to say: The board of supervisors in every county in this state, shall, at such times as the legislature may direct, meet together; and they, or a majority of them so assembled, shall nominate so many persons as shall be equal to the number of justices, of the peace, to be appointed in the several towns in the respective counties. And the judges of the respective county courts, or a majority of them, shall also meet and nominate a like number of persons; and it shall be the duty of the said board of supervisors, and judges of county courts, to compare such nominations, at such time and place, as the legislature may direct: And if on such comparison, the said boards of supervisors and judges of county courts, shall agree in their nominations, in all, or in part, they shall file a certificate of the nominations in which they shall agree, in the office of the clerk of the county; and the person or persons named in such certificates, shall be justices of the peace: And in case of disagreement in whole, or in part, it shall be the farther duty of the said boards of supervisors, and judges respectively, to transmit their said nominations, so far as they disagree in the same, to the governor, who shall select from the said nominations, and appoint, so many justices of the peace, as shall be requisite to fill the vacancies. Every person appointed a justice of the peace, shall hold his office for four years, unless removed by the county court, for causes particularly assigned by the judges of the said court. And no justice of the peace shall be removed, until he shall have notice of the charges made against him, and an opportunity of being heard in his defence.

Sec. VIII. Sheriffs, and clerks of counties, including the register, and clerk of the city and county of New-York, shall be chosen by the electors of the respective counties, once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law, to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff: and the governor may remove any such sheriff, clerk or register at any time within the three years for which he shall be elected, giving to such sheriff, clerk, or register, a copy of the charge against him, and an opportunity of being heard in his defence, before any removal shall be made.

Sec. IX. The clerks of courts, except those clerks whose appointment is provided for in the preceding section, shall be appointed by the courts of which they respectively are clerks; and district attornies, by the county courts. Clerks of courts, and district attornies, shall hold their offices for three years, unless sooner removed by the court appointing them.

Sec. X. The mayors of all the cities in this state, shall be appointed annually, by the common councils of the respective cities.

Sec. XI. So many coroners as the legislature may direct, not exceeding four in each county, shall be elected in the same manner as sheriffs, and shall hold their offices for the same term, and be removable in like manner.

Sec. XII. The governor shall nominate, and with the consent of the senate, appoint masters and examiners in chancery; who shall hold their offices for three years, unless sooner removed, by the senate, on the recommendation of the governor. The registers and assistant registers, shall be appointed by the chancellor, and hold their offices during his pleasure.

Sec. XIII. The clerk of the court of oyer and terminer, and general sessions of the peace, in and for the city and county of New-York, shall be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of the said court: and such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the several courts or by the governor, with the consent of the senate, as may be directed by law.

Sec. XIV. The special justices, and the assistant justices, and their clerks, in the city of New-York, shall be appointed by the common council of the

said city; and shall hold their offices for the same term, that the justices of the peace, in the other counties of this state, hold their offices, and shall be removable in like manner.

Sec. XV. All officers heretofore elective by the people, shall continue to be elected; and all other officers, whose appointment is not provided for by this constitution, and all officers, whose offices may be hereafter created by law, shall be elected by the people, or appointed, as may by law, be directed.

Sec. XVI. Where the duration of any office is not prescribed by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

ARTICLE FIFTH.

Sec. I. The court for the trial of impeachments, and the correction of errors, shall consist of the president of the senate, the senators, the chancellor, and the justices of the supreme court, or the major part of them; but when an impeachment shall be prosecuted against the chancellor, or any justice of the supreme court, the person so impeached, shall be suspended from exercising his office, until his acquittal; and when an appeal from a decree in chancery shall be heard, the chancellor shall inform the court of the reasons for his decree, but shall have no voice in the final sentence; and when a writ of error shall be brought on a judgment of the supreme court, the justices of that court shall assign the reasons for their judgment, but shall not have a voice for its affirmance or reversal.

Sec. II. The assembly shall have the power of impeaching all civil officers of this state for mal and corrupt conduct in office, and for high crimes and misdemeanors: But a majority of all the members elected, shall concur in an impeachment. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try and determine the charge in question, according to evidence; and no person shall be convicted, without the concurrence of two thirds of the members present. Judgment, in cases of impeachment, shall not extend farther than the removal from office, and disqualification to hold, and enjoy, any office of honor, trust, or profit, under this state; but, the party convicted, shall be liable to indictment, and punishment, according to law.

Sec. III. The chancellor and justices of the supreme court, shall hold their offices during good behaviour, or until they shall attain the age of sixty years.

Sec. IV. The supreme court shall consist of a chief justice, and two justices, any of whom may hold the court.

Sec. V. The state shall be divided, by law, into a convenient number of circuits, not less than four, nor exceeding eight, subject to alteration, by the legislature, from time to time, as the public good may require; for each of which, a circuit judge shall be appointed, in the same manner, and hold his office by the same tenure, as the justices of the supreme court; and who shall possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court: and in courts of oyer and terminer and gaol delivery. And such equity powers may be vested in the said circuit judges, or in the county courts, or in such other subordinate courts, as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor.

Sec. VI. Judges of the county courts, and recorders of cities, shall hold their offices for five years, but may be removed by the senate, on the recommendation of the governor, for causes to be stated in such recommendation.

Sec. VII. Neither the chancellor, nor justices of the supreme court, nor any circuit judge, shall hold any other office or public trust. All votes for any elective office, given by the legislature or the people, for the chancellor, or a justice of the supreme court, or circuit judge, during his continuance in his judicial office, shall be void.

ARTICLE SIXTH.

Sec. I. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear, (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the state of New-York; and that I will faithfully discharge the duties of the office of according to the best of my ability.

And no other oath, declaration, or test, shall be required as a qualification for any office of public trust.

ARTICLE SEVENTH.

Sec. I. No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Sec. II. The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate for ever, and no new court shall be instituted, but such as shall proceed according to the course of the common law; except such courts of equity, as the legislature is herein authorised to establish.

Sec. III. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever be allowed in this state, to all mankind; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace, or safety of this state.

Sec. IV. *And whereas* the ministers of the gospel are, by their profession, dedicated to the service of God, and the cure of souls, and ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding, any civil or military office or place within this state.

Sec. V. The militia of this state, shall, at all times hereafter, be armed and disciplined, and in readiness for service; but all such inhabitants of this state, of any religious denomination whatever, as from scruples of conscience, may be averse to bearing arms, shall be excused therefrom, by paying to the state an equivalent in money; and the legislature shall provide by law, for the collection of such equivalent, to be estimated according to the expense, in time, and money, of an ordinary able bodied militia man.

Sec. VI. The privilege of the writ of habeas corpus, shall not be suspended, unless when in cases of rebellion, or invasion, the public safety may require its suspension.

Sec. VII. No person shall be held to answer for a capital, or otherwise infamous crime, (except in cases of impeachment and in cases of the militia, when in actual service; and the land and naval forces in time of war, or which this state may keep, with the consent of congress in time of peace, and in cases of petit larceny, under the regulation of the legislature;) unless on presentment, or indictment of a grand jury; and in every trial on impeachment or indictment, the party accused shall be allowed counsel as in civil actions. No person shall be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law: Nor shall private property be taken for public use, without just compensation.

Sec. VIII. Every citizen may freely speak, write, and publish his sentiments, on all subjects, being responsible for the abuse of that right; and no law shall be passed, to restrain, or abridge, the liberty of speech, or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury, that the matter charged as libellous, is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Sec. IX. The assent of two-thirds of the members elected to each branch of the legislature, shall be requisite to every bill appropriating the public monies or property, for local or private purposes, or creating, continuing, altering, or renewing, any body politic or corporate.

Sec. X. The proceeds of all lands belonging to this state, except such parts

thereof as may be reserved or appropriated to public use, or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund; the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this state. Rates of toll, not less than those agreed to by the canal commissioners, and set forth in their report to the legislature of the 12th of March, one thousand eight hundred and twenty-one, shall be imposed on, and collected from all parts of the navigable communications between the great western and northern lakes, and the Atlantic ocean, which now are or hereafter shall be made and completed: And the said tolls, together with the duties on the manufacture of all salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen: and the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars, otherwise appropriated by the said act; and the amount of the revenue established by the act of the legislature of the thirtieth of March, one thousand eight hundred and twenty, in lieu of the tax upon steam-boat passengers; shall be, and remain inviolably appropriated and applied, to the completion of such navigable communications, and to the payment of the interest, and reimbursement of the capital of the money already borrowed, or which hereafter shall be borrowed, to make and complete the same. And neither the rates of toll on the said navigable communications; nor the duties on the manufacture of salt aforesaid; nor the duties on goods sold at auction, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; nor the amount of the revenue, established by the act of March the thirtieth, one thousand eight hundred and twenty, in lieu of the tax upon steam boat passengers; shall be reduced or diverted. at any time before the full and complete payment of the principal and interest of the money borrowed, or to be borrowed, as aforesaid. And the legislature shall never sell, or dispose of the salt springs belonging to this state, nor the lands contiguous thereto, which may be necessary, or convenient, for their use, nor the said navigable communications, or any part or section thereof; but the same shall be, and remain the property of this state.

Sec. XI. No lottery shall hereafter be authorised in this state; and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by law.

Sec. XII. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made, of, or with the Indians in this state, shall be valid, unless made under the authority, and with the consent of the legislature.

Sec. XIII. Such parts of the common law, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the Convention of the state of New-York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed, or altered; and such acts of the legislature of this state, as are now in force, shall be and continue the law of this state, subject to such alterations, as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

Sec. XIV. All grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void: but nothing contained in this constitution, shall affect any grants of land within this state, made by the authority of the said King or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

ARTICLE EIGHTH.

SEC. I. Any amendment, or amendments, to this constitution, may be proposed in the senate or assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment, or amendments, shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published, for three months previous to the time of making such choice; and, if in the legislature next chosen as aforesaid, such proposed amendment, or amendments, shall be agreed to, by two thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment, or amendments, to the people, in such manner, and at such time, as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature, voting thereon, such amendment, or amendments, shall become part of the constitution.

ARTICLE NINTH.

SEC. I. This constitution shall be in force, from the last day of December, in the year one thousand eight hundred and twenty-two. But all those parts of the same, which relate to the right of suffrage; the division of the state, into senate districts; the number of members of the assembly to be elected, in pursuance of this constitution; the apportionment of members of assembly; the elections hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two; the continuance of the members of the present legislature in office, until the first day of January, in the year one thousand eight hundred and twenty-three; and the prohibition against authorising lotteries; the prohibition against appropriating the public monies, or property, for local or private purposes, or creating, continuing, altering, or renewing, any body politic, or corporate, without the assent of two thirds of the members elected to each branch of the legislature, shall be in force, and take effect, from the last day of February next. The members of the present legislature, shall, on the first Monday of March next, take, and subscribe, an oath, or affirmation, to support the constitution, so far as the same shall then be in force. Sheriffs, clerks of counties, and coroners, shall be elected at the election hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two; but they shall not enter on the duties of their offices, before the first day of January then next following. The commissions of all persons holding civil offices on the last day of December, one thousand eight hundred and twenty-two, shall expire on that day; but the officers then in commission may respectively continue to hold their said offices until new appointments, or elections, shall take place under this constitution.

SEC. II. The existing laws, relative to the manner of notifying, holding, and conducting elections, making returns, and canvassing votes, shall be in force, and observed, in respect to the elections hereby directed to commence, on the first Monday of November, in the year one thousand eight hundred and twenty-two; so far as the same are applicable. And the present legislature shall pass such other and further laws, as may be requisite for the execution of the provisions of this constitution, in respect to elections.

DONE in Convention, at the capitol, in the city of Albany, the tenth day of November, in the year one thousand eight hundred and twenty-one, and of the Independence of the United States of America, the forty-sixth.

In witness whereof, we have hereunto subscribed our names.

DANIEL D. TOMPKINS, *President,*
And Delegate from the county of Richmond.

JOHN F. BACON, SAMUEL S. GARDINER, } *Secretaries.*

DELEGATES,

WHO SIGNED THE AMENDED CONSTITUTION.

Ezekiel Bacon, *Oneida.*
Jirah Baker, *Rensselaer.*
Elisha Barlow, *Dutchess.*
Barak Beckwith, *Madison.*
V. Birdseye, *Onondaga and Oswego.*
John Bowman, *Monroe.*
Olney Briggs, *Schoharie.*
David Brinkerhoff, *Cayuga.*
David Buel, jun. *Rensselaer.*
David Burroughs, *Genesee.*
Matt'w. Carpenter, *Tioga.*
Nathan Carver, *Clinton and Franklin.*
Ameri Case, *Onondaga and Oswego.*
Salman Child, *Saratoga.*
Daniel Clark, *Ulster and Sullivan.*
Joseph Clyde, *Otsego.*
Ela Collins, *Lewis.*
John Cramer, *Saratoga.*
J. Dubois, *Ulster and Sullivan.*
John Duer, *Orange.*
Jacobus Dyckman, *New-York.*
A. Eastwood, *Onondaga and Oswego.*
Ogden Edwards, *New-York.*
Jas. Fairlie, *New-York.*
Jason Fenton, *St. Lawrence.*
Augustus F. Ferris, *Cayuga.*
Joel Frost, *Putnam.*
John Hallock, jun. *Orange.*
James L. Hogeboom, *Rensselaer.*
Parley E. Howe, *Onondaga & Oswego.*
Ransom Hunt, *Otsego.*
Isaac Hunting, *Dutchess.*
James Hunter, *Ulster and Sullivan.*
H. Huntington, *Oneida.*
Timothy Hurd, *Steuben and Allegany.*
Rufus King, *Queens.*
John Knowles, *Madison.*
Sanders Lansing, *Herkimer.*
Jno. L. Lawrence, *New-York.*
John Lefferts, *Kings.*
Alex'r. Livingston, *Wash. & Warren.*
Peter R. Livingston, *Dutchess.*
James M'Call, *Steuben & Allegany.*
Peter Millikin, *Orange.*
Usher H. Moore, *Suffolk.*
Peter Jay Munro, *Westchester.*
Samuel Nelson, *Cortland.*
William Park, *Otsego.*
William Paulding, jun. *New-York.*
Jarvis K. Pike, *Chenango.*
Nathaniel Pitcher, *Wash. & Warren.*
Augustus Porter, *Erie, Niagara, &c.*
Charles Pumpelly, *Broome.*
Jacob Radcliff, *New-York.*
John Reeve, *Rensselaer.*
John Richards, *Washington & Warren.*
Jeremy Rockwell, *Saratoga.*
Edward Rogers, *Madison.*
Erastus Root, *Delaware.*
Robert S. Rose, *Seneca.*
John Z. Ross, *Genesee.*
James Rosebrugh, *Livingston.*
Samuel Russell, *Erie, Niagara, &c.*
Ebenezer Sage, *Suffolk.*
Nathan Sanford, *New-York.*
Reuben Sandford, *Essex.*
Abraham H. Schenck, *Dutchess.*
Nathan'l Seaman, *Queens.*
Jonas Seely, *Seneca.*
Peter Sharpe, *New-York.*
Alexander Sheldon, *Montgomery.*
Joshua Smith, *Suffolk.*
Richard Smith, *Tompkins.*
Peter Stagg, *New-York.*
Asa Starkweather, *Schoharie.*
Hiram Steele, *Jefferson.*
Jacob Sutherland, *Schoharie.*
Philetus Swift, *Ontario.*
Nathan Taylor, *Chenango.*
Egbert Ten Eyck, *Jefferson.*
Richard Townley, *Tompkins.*
Wm. Townsend, *Wash. & Warren.*
Jehiel Tuttle, *Greene.*
M. Van Buren, *Otsego.*
Joshua Van Fleet, *Ontario.*
Samuel G. Verbryck, *Rockland.*
Jonathan Ward, *Westchester.*
Elizur Webster, *Genesee.*
P. H. Wendover, *New-York.*
H. Wheaton, *New-York.*
Melancton Wheeler, *Wash. & Warren.*
N. Williams, *Oneida.*
John W. Woods, *Rensselaer.*
B. Woodward, *Orange.*
Sherman Wooster, *Herkimer.*
Henry Yates, jun. *Schenectady.*
Samuel Young, *Saratoga.*

STATE OF NEW-YORK, *Secretary's Office.*
Albany, November 10, 1821.

I, John V. N. Yates, secretary of the state of New-York, do hereby certify, that the foregoing is a true copy, of the engrossed constitution of the said state, as adopted in Convention this day, and deposited of record in this office.

J. V. N. YATES, *Secretary of State.*

Form of certificate by the inspectors of election, recommended by the secretary of state, to be adopted by them, making the necessary alterations of town, county, number of votes, &c.

DUTCHESS COUNTY, }
Town of Rhinebeck. }

A true canvass and estimate of the votes given in the town of Rhinebeck, and county of Dutchess, on the third Tuesday of January, 1822, and the two days succeeding, inclusive, under certain resolutions of the late Convention of this state, submitting to the decision of the people the amended constitution of this state, adopted by the said Convention, viz: One hundred and ninety votes were given for the said amended constitution, by that number of ballots being written or printed with the word "Yes": Twenty-one votes were given against the said amended constitution, by that number of votes being written or printed with the word "No."

Given under our hands at Rhinebeck aforesaid, this
day of in the year 1822.

} *Inspectors of election.*

In the Convention of the people of the state of New-York, assembled at Albany, on the twenty-eighth day of August, in the year of our Lord, one thousand eight hundred and twenty-one, pursuant to an act of the legislature of the said state, entitled "an act recommending a Convention of the people of this state," passed March 13th, 1821:

"*Resolved*, That the preceding amended constitution of this state, be submitted together, and not in distinct parts, to the decision of the citizens of this state; and if the said amended constitution be ratified by the citizens, in the manner hereinafter prescribed, the same shall become the constitution of this state.

"*Resolved,* That an election be held in the several towns and wards in this state, on the third Tuesday of January next, and be continued by adjournment, from day to day, for three days successively, including the first; at which election, the citizens qualified as voters, by the act aforesaid, may vote, by ballot, for, or against, the said amended constitution. And on such of the said ballots as are for the said amended constitution, shall be written, or printed, the word "Yes," and on those which are against the said amended constitution, the word "No."

"That the officers of the several towns in this state, authorised to act as inspectors of the election for senators, and the persons who may be appointed in the several cities in this state, for the purpose, shall be inspectors of the election hereby directed; and that the said election shall, in all things, be conducted in like manner, as nearly as may be, as is prescribed in, and by, the fourth, fifth, and seventh sections of the act, entitled "an act, for regulating elections," passed March 29, 1813; and in and by the second section of the act, entitled "an act, recommending a convention of the people of this state," passed March 13th, 1821; and in, and by, the act, entitled "an act to amend an act, entitled "and act, for regulating elections," passed March 29th, 1813, passed April 11th, 1815. And that the votes given at such elections, shall be canvassed by the inspectors of the several polls; and returns of the said votes shall be made, by the said inspectors, to the clerks of the respective towns and counties; and certificates of such returns shall be recorded by the said clerks, and transcrips of such certificates shall be certified and delivered to the secretary of state, in like manner, as nearly as may be, as is prescribed in, and by, the sixteenth section of the act, entitled "an act for regulating elections," passed March 29, 1813, in relation to votes given for senators.

"That the transcripts last mentioned, having been received by the secretary of state, from the clerks of the respective counties, shall remain in his office of record; and the said secretary, the surveyor-general, the attorney general, the comptroller, and treasurer of this state, or any three of them, shall, on the fif-

teenth day of February next, assemble at the office of the said secretary, and proceed to calculate and ascertain the whole number of votes given at such election for, and against, the said amended constitution ; and shall thereupon, within six days thereafter, determine conformably to such transcripts the number of votes given for, and against the amended constitution respectively, and whether a majority of the said votes are for or against, the said amended constitution. And they shall, without delay, make, and subscribe, with their proper names, a certificate of such determination, and file the same in the office of the secretary of state, which shall remain therein of record ; and shall, without delay cause to be delivered a true copy thereof, so subscribed as aforesaid, to the president of this Convention ; to the person administering the government of this state ; to the president of the senate ; and to the speaker of the house of assembly ; and shall also cause a copy of such certificate to be published in the newspaper, printed by the printers to this state. And if it shall appear by the said canvass last mentioned, that the majority of votes, given and returned as aforesaid, are against the amended constitution, then the said amended constitution shall be deemed to be rejected by the citizens of this state : But if a majority of the said votes are for the amended constitution, then the same shall be deemed to be ratified, and confirmed, by the citizens of this state.

Resolved, That five thousand copies of these resolutions, with the amended constitution subjoined, be printed ; and that the comptroller cause the same to be transmitted, without delay, at the expense of the state, to the county clerks ; whose duty it shall be, to distribute the same among the different towns.

Resolved, That five thousand copies of the address of the Convention, to their constituents, be printed, and distributed in like manner ; and that two copies of the amended constitution, be transmitted, by the comptroller, by mail, to each of the delegates to the Convention.

By order of the Convention.

DANIEL D. TOMPKINS, *President,*
And Delegate from Richmond county.

JOHN F. BACON,
SAMUEL S. GARDINER, } *Secretaries.*

STATE OF NEW-YORK, *Secretary's Office,*
Albany, November 10, 1821.

I certify the preceding to be a true copy of certain resolutions of the Convention of this state, filed this day, in this office.

J. V. N. YATES, *Secretary of State.*

APPENDIX.

Remarks of Mr. Van Vechten, on the proposition of Mr. Root, for abolishing the Court of Chancery—Oct. 23.

Mr. Van Vechten said, that he would offer no apology for troubling the committee with a few observations in reply to what had been urged in support of the amendments of the gentleman from Delaware, (Gen. Root). He should confine his remarks to two of the propositions which the amendments contained, and invert their order.

The first is, the proposition to abolish the present court of chancery, and to transfer its jurisdiction to the supreme court—Why is this transfer proposed? It has been said by the gentleman from New-York (Mr. Radcliff) that our equity jurisdiction is too enormous to be safely entrusted to a single judge. Let me ask whether it will be safer to vest it in the supreme court? That court already possesses the most comprehensive legal jurisdiction. Will the union of enormous equity and legal jurisdictions in the same tribunal, produce the greatest safety? The sound republican maxim is, that it is safer to divide than to accumulate power in the same hands. With a view, therefore, to safety, the proposed transfer of equity jurisdiction to the supreme court, is wholly inadmissible.

The gentleman has also urged that the proceedings in the court of chancery are extremely dilatory and expensive. For the sake of the argument I will admit the truth of his assertion, but must beg the gentleman to explain how vesting equity jurisdiction in the supreme court will expedite the decision, or diminish the expense of chancery causes? The forms and course of proceedings are not proposed to be altered, nor is it pretended that the supreme court can despatch more business than the court of chancery. It is a notorious fact, that the latter court is unable to dispose of its legal business with requisite expedition. How then will it be able, when charged with equity jurisdiction also, to perform its multiplied duties more expeditiously?

But the gentleman from Saratoga (Col. Young) is in favour of the amendment because the court of chancery is generally held in New-York and Albany, and he wishes to bring equity nearer home to remote suitors. Is not the gentleman aware that the terms of the supreme court are held at precisely the same places where the court of chancery sits? In what way does he contemplate to bring equity nearer home to remote suitors by transferring equity jurisdiction to the supreme court? Does he purpose that equity causes shall be sent to the circuits to be argued? Will that accommodate suitors? In the first place the clerk in chancery must either attend with the pleadings or furnish certified copies. Each party must have copies of the depositions and exhibits, and pay liberal fees to counsel for attending the circuit to argue his cause. These will be heavy items in the bills of expense. And it must not be forgotten that the cause must be prepared for argument by the solicitor and counsel who conduct it wherever their residence may be. Of course sending it to the circuit to be argued will not relieve the suitors from the inconvenience of long journeys to attend their solicitors and counsel in case they reside where the supreme court terms are usually held.

Again, if equity causes are to be heard and decided at the circuits, it must be by a single judge, which is liable to the same objection made by the gentleman from New-York to the chancellor. But waiving this objection, will it conduce to the convenience of suitors either on the law or equity sides of the circuits to have issues triable by juries and causes in equity placed on the same calendar—to have jurors, witnesses and parties, kept waiting while long chancery causes are heard? Or will it promote the convenience of the public to have the courts of oyer and terminer, in which the circuit judge must preside, delayed during the hearing of chancery causes? Suppose, however, that all these in-

conveniences are overlooked, when is the circuit judge to make his decrees in complicated equity causes? Is this to be done in the hurry of a circuit? Or is he to report the case and arguments of counsel to the supreme court for their decision thereon? Or is he to report the case merely in order to have it re-argued at the bar of the supreme court? This will indeed be a notable mode of administering equity, with due deliberation, with great convenience and with economy and expedition? Is the committee prepared to approve it? Is it willing to abandon a system long tried, and which has been found eminently beneficial—a system highly prized and admired by impartial and enlightened men wherever it is understood, for a project which has nothing besides its novelty and incongruity to recommend it? I should hope not.

But, said Mr. Van Vechten, let me examine a little further some of the arguments which have been urged in favour of the project alluded to—and first I ask what danger there is in our equity jurisdiction being vested in a single judge. May not the proceedings of the chancellor be arrested by appeal and reviewed in the court of errors at every step, which involves the rights of parties? Is not this a perfect safeguard? What other judicial tribunal is so guarded?

Again, cannot a single judge expedite business more than a numerous bench? And, are our chancery decisions less profound, or less admired and approved than the decisions of the supreme court? I put it to every candid and enlightened man who has read both, to answer these questions; and am willing that their answers to them shall determine the fate of the proposition before us.

The gentleman from New-York, (Mr. Radcliff,) has told us, that the jurisdiction of the court of chancery has been greatly, and, as I understood him, unwarrantably extended. How is this proven? Has a single fact been stated to verify it? Is it credible that such extension would have been acquiesced in, when there was a competent power to restrain it? This suggestion can hardly have been intended as an argument addressed to the good sense of this committee.

But it is urged that the judicial system of the United States, furnishes a precedent for the proposed amendment. To this it has been already answered by my honourable colleague, (Mr. Kent,) that the jurisdiction of the courts of the United States embraces few cases of equity, and we have the testimony of eminent judges, who preside in those courts, to prove, that if their equity jurisdiction was extensive, it would be impracticable for them to administer it. The truth is, said Mr. V. V. that the systems of law and equity in this state, are essentially distinct in their nature. Each is sufficiently comprehensive to occupy the whole time and talents of the ablest jurists. Very few men can be found, who are competent to sit one day as judges of law, and the next as judges of equity, and to separate correctly in their own minds, between the appropriate jurisdiction of each. There would therefore be great danger, that by uniting the two jurisdictions in the same tribunal, the boundary line between them would soon be lost sight of, and that every thing would slide into the equity jurisdiction, to the utter subversion of mere law.

But the gentleman from Saratoga, (Col. Young,) has informed us, that the present chancellor was taken from the bench of our supreme court, and all agree that he acquits himself well in his new station. This is freely admitted, but was his honour the chancellor to be interrogated on the subject, he would frankly tell the committee, that upon accepting his present office, he found himself constrained to pursue a course of intense study, to enable him to perform the duties of it with promptness and satisfaction; and that experience has taught him, that it requires something more than the qualifications of an able common law judge, to make an able chancellor.

The next proposition, said Mr. V. V. he should notice, is that which proposes to separate the chancellor and judges of the supreme court, from the court of errors. What renders this separation desirable? Will the court of errors be better fitted for its important duties, when deprived of the talents and learning of its present judicial members? This cannot be pretended. But it is urged that the court may obtain the opinions of the chancellor and judges in every case, without making them constituent members. Be it so, and does that prove

that it is not wiser to have them attached to the court, that they may have the benefit of the arguments of eminent counsel on the final hearing, and the senators may have the advantage of conferring with them in the progress of the argument. On this point there can be no serious difference of opinion.

Mr. V. V. concluded by observing that he should not detain the committee, with any remarks upon the other parts of the amendment.

Remarks of Mr. Van Vechten, on the amendment offered by Mr. Tompkins, for abolishing the court of chancery, &c. October 26.

Mr. Van Vechten. I will not enquire into the motives which have produced this proposition. Its obvious effect is indisputable. If adopted, the offices of the chancellor and judges of the supreme court will become vacant whenever it is ratified by the people. Is this one of the objects for which the Convention was chosen? It can hardly be considered an amendment of the constitution; for the purpose of constitutional amendments, is to settle general and permanent fundamental provisions. The office of the article under consideration will have been performed the moment it is ratified—what necessity is there for it? The tenure of office of the Chancellor and judges is not altered, nor is the organization of the courts in which they preside changed. Hence, it seems that the only end to be attained by it, is to vacate their offices. Is this Convention prepared to incur the just reproach which such a step will merit? The majority has already agreed to an amendment by which the Chancellor and judges are made removable, upon the application of the two houses of the legislature, provided two-thirds of the members concur therein. If then your Chancellor, or any of the judges of your supreme court have done aught for which they deserve to be removed, the legislature will have competent power to effect their removal. I entreat the committee not to tarnish the character of the Convention, by sanctioning a proposition so wanton, so violent, and so unbecoming its dignity. But let me examine the prominent reasons which have been urged to support it. It has been alleged that some of the judges have lost the confidence of the public by becoming political partizans. I will not stop here to investigate the truth of their partizanship; but admitting it to be true, I ask the committee to consider dispassionately whether it justifies the proposition before us. Let it be remembered, that all our public officers from the highest to the lowest have taken an open, avowed and decided part in political conflicts for many years past. The judges are men of like passions and infirmities as other men—when I say this, I wish not to be misunderstood. I am free to declare that in my judgment, it is desirable and highly proper that the judiciary of the state should stand aloof from the violence of party collisions; but I must beg leave to add, that with the examples and excitements which have been made to bear upon some of its members, it was more to be desired than expected that they should have done so. Have they not again and again been invited to party councils—to aid in the formation of party plans, and to lend their influence to carry them into operation? And have not those invitations proceeded from men holding distinguished stations in the different departments of the government? Will gentlemen candidly tax their memories, and ponder on these questions; and if they do not admit of negative answers, with what propriety can we agree to a proposition for vacating the seats of any of the judges because they have participated in our party conflicts. Nor is this all—one of the judges against whom the proposition before us is directed, has been appointed by the legislature a party elector of president and vice president of the United States. Let me ask, would that appointment have been made, had he not been a firm and tried partizan? Did not some prominent republican members of this Convention assist in promoting and making it? If they did, is it consistent now to urge the removal of any of the judges for having taken a part in our political conflicts? The procedure appears to me unseemly, and cannot I apprehend escape the observation and reprobation of our constituents. I shall therefore vote against it from a sense of duty, uninfluenced by either party attachments or party resentments.

GEN. TALLMADGE's *speech on the motion made by him in Convention, on the 31st day of October, to strike out the word "senate," and to insert "council," to the end, that a council of appointment be formed, consisting of the first eight senators elected under the new constitution; and so for the other three classes of senators, in rotation.*

In support of this motion, Mr. Tallmadge said that the object of his present motion, to strike out "senate," and insert "council," was to call the attention of the house to the great and important principle of separating the departments of government. He wished, as far as possible, to disconnect the legislative from the executive powers; and, above all, he was unwilling to impose upon and connect the senate with the appointing power, which was the worst and most corrupt and corrupting portion of the executive duties. He believed that we had already gone so far as to injure the constitution by the plans proposed: and he was fearful that in the end a worse constitution would be presented than the one which we had been endeavouring to amend. The Convention had started upon the principle that it was necessary to keep the great departments of the government separate. It had been determined that the judiciary should be a distinct branch; and, therefore, it had been taken from the council of revision. And it was likewise conceded, that it was equally imporportant for the legislature to be a separate and an independent branch—the law-making power, and to interfere with no other department.

It would be extremely desirable that neither branch of the legislature should interfere with the appointing power; and, therefore, he would gladly provide for a council of eight to be elected, one from each senate district; but, as various other plans had been suggested to this Convention without success, it appeared there was no other acceptable mode than to have the legislature exercise it in some way; and as a less evil than the plan at present established, he would recommend that the eight senators annually elected, constitute a council, who, together with the governor, should be an appointing power, instead of the governor and whole senate.

Mr. T. was not disposed to break in upon the arrangement that had already been established, with respect to the appointment of officers in the different towns and counties of the state—he was an advocate for dispersing the appointing power, and sending to the several counties all the officers which were proper to be sent—to be there elected, or otherwise appointed in the counties. He wished he might not be misunderstood. The proposed council was intended only to come in the place of the whole senate. He would only go so far as to include those who, by the present arrangement, must be appointed at the seat of government. These eight senators, coming immediately from the people, bringing with them their wishes and feelings, would be well prepared to exercise this power; and if the exercise of it is calculated to injure the character of our legislature, it would certainly be better in the hands of eight than thirty-two. By the provisions already adopted, we leave to the governor and senate the appointment of more than one thousand officers, and, because we cannot suit ourselves as to the mode of appointment for numerous classes of officers yet unprovided for, and feeling ashamed to impose all upon the senate, we flee the difficulty; and we have gravely determined that all officers, not provided for by this constitution, shall be appointed in such manner as the legislature shall direct. Let it be remembered that we have made no arrangement for the appointment of any of the inspectors, auctioneers, surrogates, health-officers, &c. &c. nor for the numerous class of officers who are to take the acknowledgment of deeds, and with various others, amounting to upwards of two thousand. All this has been left for the legislature to determine upon hereafter; and what can they do if the power is not marked out by the constitution? Was it intended to have these officers as the bantlings of party, as a sure source of legislative disorder, and to vibrate from one extreme to the other, as should best suit the corruption of the times? On a former occasion a proposition was presented to provide for the appointment of those minor officers, in the counties, and without placing any share of them in the hands of the senate; but this was rejected. What is the result of all our determinations, to separate and preserve the different branches of our government, independent of each other? After having

taken the judiciary from the council of revision, and abolishing the council of appointment, because it was contrary to the principles upon which our government ought to be established, to allow the legislature to mingle with the other departments of the government, we have finally hit upon a plan which puts the same power, that we dare not trust in both branches of the legislature, into the hands of the senate ; and then we have provided further, that about three thousand appointments shall be left as a subject of future legislation. Is it expected that the appointment of these officers is to be given to the assembly as their portion of the patronage, and as an offset against the power bestowed upon the senate ? With such plans, operating on numerous assemblies, who can expect purity in legislation ? There appears to be no possible place to deposit this power but in the senate ; and in order to preserve as much purity as is consistent, in that body, the plan of having eight is proposed. Notwithstanding all the exertion that has been made, and the anxiety that has been expressed, to disperse this contaminating power ; we are putting it at last into a branch of the legislature which ought to be preserved from the pollution of local and party considerations. It is to guard against these difficulties and dangers, that I at this time press upon this Convention the consideration of a subject, with which is connected the dearest interests of the community, a virtuous legislature.

The Senate is to constitute the court of errors, and shall we, in addition to their legislative and judicial functions, add that of an appointing power ; and by so doing, take that source of corruption, which we could not endure in both branches of the legislature, and place it in the Senate ? In addition to the power of appointing, they are also to be the removing power of many officers not appointed by them. This is a radical mistake. (Here Mr. T. was interrupted by Judge Radcliff, who was desirous to know what the question was.)

Mr. T. was extremely happy that the gentleman had made the inquiry, as he would undoubtedly be the better prepared to judge upon its merits, and he hoped the gentleman would be willing to fall into the measure under consideration, and lend his aid in endeavouring to establish it.

We have next turned the senate into a court martial, to inquire into the character of militia officers, and it is really to be feared, that by intrusting them with so large a share of appointing power, we shall completely defeat the great object for which we have been so anxiously striving : and which it is supposed we have in a measure accomplished.

The plan which I propose to recommend is the following :

That the eight senators, composing the 4th class, shall constitute and be an executive council.

That the governor shall nominate by message in writing, and with the consent of the said council, shall appoint all officers in this state ; whose appointments are not herein otherwise provided for, and which shall be established by law. But the legislature may, from time to time, provide by law, for the election by the people, or other mode of appointment, for all city or county officers. Provided such law or alteration, shall not take effect until two years after the same shall be enacted.

This number of eight is, perhaps, better adapted to the examination of claims to office, and charges against officers than the whole senate; and it certainly cannot interfere so much with the purity of legislation, as the plan of having the whole number of thirty-two engaged in this appointing power. It is notorious that vacancies may happen in the offices of our government, in which case it will be extremely inconvenient to wait for the convening of our legislature, before they can be filled ; and to convene the senate for that express purpose, would be attended with a very serious expense.

We have been told by one of the highest judicial characters in the State, (the chancellor) that his term of service must expire within a year and a half; and this will occasion a vacancy in midsummer. Shall there be a suspension of the business of the court of chancery during the recess ? for he cannot be permitted to hold over till the sitting of the legislature, or will the state go to the expense of calling the senate, to fill that vacancy ?

It is to guard against some of the evils of which we have been admonished by experience, and to prevent corruption in the legislature that this subject is at

so late a period of our labours, submitted to the serious consideration of this convention.

Let it not be understood, said Mr. T. that by this plan I would in the least degree interfere with the laudable endeavours which have been directed to the dispersing of this power among the people, as much as can be consistent with true policy. There are many in this house who are not well satisfied with the idea of leaving so great a share of this power to the discretion of the Legislature, and what, in all probability, will ultimately fall back upon the senate.

Here Mr. T. begged the indulgence of the house whilst he should read a few words from President Adams' defence of the constitution of government, as follows:

"Hitherto we had heard nothing but of successive sovereign assemblies of the people's representatives; now indeed we learn that this assembly is to appoint judges, generals, and admirals; and a standing committee perhaps for the treasury, the admiralty, the customs, excise and foreign affairs. Whether these judges,and committees, and commanders, are to be members of the sovereign assembly, or whether their appointments are to vacate their seats, is not ascertained; but in either case it is obvious they will be the friends and confidents of the prevailing party in the house: they will be persons on whose friendship the major party in the assembly can rely to promote their views, by advancing their friends among their constituents, in order to procure a new election, or, in other words, a *standing power;* a thing which our author dreads so much in the representative assembly; and thus the whole executive and judicial power, and all the public treasure, is at once applied to corrupt the legislature and its electors. And what is it "to be accountable to the people's assemblies?" It is to be afraid to offend the strongest party in the house, by bestowing an office or deciding a cause, civil or criminal, against their inclinations.—Corruption is let in in such a torrent, as the virtue of no people that ever lived, or will live, is able to resist, even for a few years; the gangrene spreads immediately through the whole body."

With these considerations, he submitted to the wisdom of the convention the proposition which he had read, and which, he flattered himself, if adopted, would be a means of preserving, in a measure, the purity of the legislature, by keeping from the senate a vast number of appointments, which must otherwise devolve upon that body.

Mr. Burrough's remarks on Mr. King's motion in Convention, on the right of Suffrage.

Mr. Burroughs. Mr. President—I am surprised, that at this late period of the session, an attempt should be made to introduce a distinction between citizens of the same community, in the exercise of the right of suffrage; it seems to me to be an insult on the good sense of this Convention. We have at least three times voted this principle down by large majorities. At an early period of this session, an attempt was made, to require the citizen who approached the altar of liberty, (the ballot boxes,) to bring with him a little turf, as an offering, before he could be allowed to pay his devotion there. This, sir, was voted down by a large majority; next a little cash was required as a qualification; this also failed. Why then are we again called on to vote on a proposition of this kind? Do gentlemen believe that this Convention have so materially changed their minds on this subject, as to afford them a prospect of success? This may be possible, but I think hardly probable; and why this extreme anxiety to make this odious distinction, between citizens of a country, whose interests must be the same? Surely the mere payment of a six cent tax, cannot so far improve the judgment or heart of a man, as to render him a better voter than he was before, or than his honest neighbour that has not happened to pay this six cent tax; besides, this proposition is encumbered with qualifications difficult to define. How, I would ask, are a board of inspectors to determine the equity right of a person to land, on a contract to purchase? Are they to be vested with chancery powers for this purpose? If so, would they be competent to the proper exercise of such powers? Sir, the proposition is unreasonable, and impracticable, and cannot be carried into effect, and I therefore hope it will not prevail.

[At the extra session of the legislature, in November, 1820, a bill passed both Houses, by the provisions of which a Convention was to be called, without referring the question to the people in the first instance—delegates were to be chosen in February, 1821—and the convention to assemble in June following. This bill was sent to the council of revision, who returned it with the following objections, drawn up by Chancellor Kent, and concurred in by his Excellency Governor Clinton and Chief Justice Spencer, and dissented from by Justices Yates and Woodworth, Justices Van Ness and Platt, being absent.]

IN ASSEMBLY--Nov. 20th, 1820.

Objections of the council to the bill calling a Convention.

In Council of Revision,
November 20, 1820.

Resolved, That it appears improper to the council, that the bill, entitled " an act recommending a Convention of the people of this state," should become a law of this state.

1. Because the bill recommends to the citizens of this state, to choose by ballot, on the second Tuesday of February next, delegates to meet in Convention, for the purpose of making such alterations in the constitution of this state, as they may deem proper, without having first taken the sense of the people whether such a Convention, for such a general and unlimited revisal and alteration of the constitution, be, in their judgment, necessary and expedient.

There can be no doubt of the great and fundamental truth, that all free governments are founded on the authority of the people, and that they have, at all times, an indefeasible right to alter or reform the same, as to their wisdom shall seem meet. The constitution is the will of the people, expressed in their original character, and intended for the permanent protection and happiness of them and their posterity; and it is perfectly consonant to the republican theory, and to the declared sense and practice of this country, that it cannot be altered or changed, in any degree, without the expression of the same original will. It is worthy therefore, of great consideration, and may well be doubted, whether it belongs to the ordinary legislature, chosen only to make laws, in pursuance of the provisions of the existing constitution, to call a Convention in the first instance, to revise, alter, and perhaps remodel, the whole fabric of the government, and before they have received a legitimate and full expression of the will of the people, that such changes should be made. The difficulty of acceding to such a measure of reform, without the previous approbation of the constituents of the government, presses with peculiar force, and with painful anxiety, upon the council of revision, which was instituted for the express purpose of guarding the constitution, against the passage of laws " inconsistent with its spirit."

The constitution of this state has been in operation upwards of forty years, and we have but one precedent on this subject, and that is the case of the Convention of 1801. But it is to be observed, that the Convention in that year was called for two specific objects only, and with no other power or authority whatsoever. One of these objects, was merely to determine the true construction of one of its articles, and was not intended to alter or amend it; and the other was to reduce, and limit the number of the senators and members of assembly—The last was the single alteration proposed, and perhaps even with respect to that point, it would have been more advisable, that the previous sense of the people should have been taken. But there is no analogy between this single and cautious case, and the measure recommended by the present bill, which is not confined to any specific object of alteration or revisal, but submits the whole constitutional charter, with all its powers and provisions, however venerable they may have become by time and valuable by experience, to unlimited revisal. The council have no evidence before them, nor does any legitimate and authentic evidence exist, that the people of this state think it either wise or expedient, that the entire constitution should be revised and probed, and perhaps disturbed to its foundation.

The council, therefore, think it the most wise and safe course, and most accordant with the performance of the great trust committed to the representative powers under the constitution, that the question of a general revision of it, should be submitted to the people in the first instance, to determine whether a Convention ought to be convened.

The declared sense of the American people throughout the United States on this very point, cannot but be received with great respect and reverence, and it appears to be the almost universal will expressed in their constitutional charters, that Conventions to alter the constitution, shall not be called at the instance of the legislature without the previous sanction of the people by whom those constitutions were ordained.

The constitution of Massachusetts, was established in 1780, and contains the earliest provision on this subject. It provided, that in the year 1795, the sense of the people should be taken on the necessity or expediency of revising the constitution, and that if two thirds of the votes of the people were in favour of such revision and amendment, the legislature should provide for calling a convention. The convention now sitting in that state, was called in consequence of a previous submission of such a question to the people. The constitution of South Carolina was ordained in 1790, and in that it is declared, that no convention should be called, unless by the concurrence of two thirds of both branches of the legislature. And the constitution of Georgia, established in 1798, contains the same provision; thus shewing, that though the people be not previously consulted on the question, yet a more than ordinary caution and check upon such a measure was indispensable. The constitution of Delaware, of 1792, declares very emphatically, that no convention shall be called but by the authority of the people, and that their sense shall be taken by a vote for, or against a convention, and that if a majority of all the citizens shall have voted for a convention, the legislature shall make provision for calling one. The same constitutional provision that no convention shall be called to alter, or amend the constitution, until the sense of the people by vote shall have been previously taken, whether, in their opinion, there was a necessity or expediency for a revision of the constitution, has been successfully adopted, by the constitution of New-Hampshire, in 1792; by the constitution of Tennessee, in 1796; by the constitution of Kentucky, in 1799; by the constitution of Louisiana, in 1812; by the constitution of Indiana, in 1816; by the constitution of Mississippi, in 1817; and by the constitution of Illinois, in 1818.

It would, as the council apprehended, be impossible to produce higher and more respectable authority in favour of such a provision, and of its value and safety.

2. Because the bill contemplates an amended constitution to be submitted to the people to be adopted or rejected, *in toto*, without prescribing any mode by which a discrimination may be made between such provisions as shall be deemed salutary, and such as shall be disapproved by the judgment of the people. If the people are competent to pass upon the entire amendments, of which there can be no doubt, they are equally competent to adopt such of them as they approve, and to reject such as they disapprove; and this undoubted right of the people, is the more important if the convention is to be called in the first instance, without a previous consultation of the pure and original source of all legitimate authority. And it is worthy of consideration, and gives additional force to the expediency, and fitness of a previous reference to the people, that time will be thereby given for more mature deliberation upon questions arising upon the constitution, which are always momentous in their nature, and calculated to affect, not the present generation alone, but their distant posterity, and when the legislature may probably have it in their power to avail themselves of a more just and accurate apportionment of the representation in the convention, among the several counties in this state.

Ordered, That the secretary deliver the bill, together with a copy of the objections aforesaid, to the honourable the assembly.

J. V. N. YATES, Secretary.

☞ *A Statement of the Votes given at the election in April,* 1821, *on the question of* Convention or No Convention, *in the several Towns and Counties of this State.*

SOUTHERN DISTRICT.

CITY OF NEW-YORK.	Convention.	No Convention.
1st. Ward	447	462
2d. Ward	389	220
3rd. Ward	477	287
4th. Ward	624	148
5th. Ward	721	179
6th. Ward	694	141
7th. Ward	875	49
8th. Ward	739	129
9th. Ward	377	105
10th. Ward	1170	90
	6513	1810

DUTCHESS.	Convention.	No Convention.
Clinton	88	144
Northeast	253	20
Dover	130	126
Rhinebeck	250	172
Beekman	56	304
Washington	111	146
Fishkill	473	256
Redhook	168	203
Hyde-park	138	144
Freedom	116	177
Amenia	380	73
Milan	174	51
Pleasant-Valley	174	118
Pawlings	63	179
Stanford	223	127
Poughkeepsie	565	142
	3362	2382

ROCKLAND.	Convention.	No Convention.
Clarkstown	185	31
Orangetown	125	30
Haverstraw,	187	1
Hampstead	331	7
	828	69

QUEENS.	Convention.	No Convention.
Flushing	82	125
Oysterbay	147	343
North-Hempsted	100	92
Hempsted	140	486
Jamaica	34	166
Newtown	189	120
	692	1332

WESTCHESTER.	Convention.	No Convention.
Bedford	71	198
Whiteplains	55	7
Poundridge	56	115
Yonkers	104	2
Somers	62	124
Cortland	256	124
Mount-Pleasant	193	165
New Castle	11	64
Greensburgh	59	148
Eastchester	56	28
New Rochelle,	56	67
Mamaroneck	65	1
North Castle	80	29
South Salem	47	104
Yorktown	60	122
North Salem	114	13
Pelham	16	2
Westchester	109	8
Rye	61	89
Scarsdale	24	1
Harison	68	12
	1623	1423

SUFFOLK.	Convention.	No Convention.
Huntington	184	86
Southhold	162	63
East Hampton	159	5
Riverhead	30	113
Shelter Island	14	2
Southampton	318	31
Smithtown	71	46
Brookhaven	66	220
Islip	19	51
	1023	617

RICHMOND.	Convention.	No Convention.
Southfield,	66	45
Westfield	58	96
Northfield	126	54
Castleton	144	36
	394	231

KINGS.	Convention.	No Convention.
Brooklin	584	35
Flatbush	38	101
New Utrecht	87	29
Flatlands	17	36
Bushwick	79	13
Gravesend	5	76
	810	290

PUTNAM.	Con.	No Con.
Patterson	54	62
Philipstown	188	36
Carmel	229	27
Kent	58	97
Southeast	132	33
	661	255

RECAPITULATION.	Con.	No. Con.
New-York	6513	1810
Dutchess	3362	2382
Westchester	1623	1423
Putnam	661	255
Queens	692	1332
Rockland	828	69
Richmond	394	231
Kings	810	290
Suffolk	1023	617
	15906	8409

MIDDLE DISTRICT.

ORANGE.		
Deerpark	117	30
New Windsor	115	112
Montgomery	310	198
Wallkill	246	215
Newburgh	326	137
Minisink	309	77
Blooming Grove	113	99
Warwick	364	156
Goshen	283	118
Cornwall	152	60
Monroe	135	88
	2470	1290
GREENE.		
Catskill	177	286
Coxsackie	42	264
Cairo	72	246
New Baltimore	144	77
Athens	68	163
Hunter	50	67
Lexington	173	74
Durham	137	258
Greenville	159	166
Windham	90	170
	1112	1771
SCHOHARIE.		
Schoharie	285	197
Jefferson	153	116
Broome	208	72
Blenheim	223	10
Cobleskill	163	171
Summit	114	60
Sharon	175	307
Middleburgh	227	288
Carlisle	86	106
	1634	1327

ALBANY.		
City of Albany, 1st Ward	316	107
2d Ward	336	87
3d Ward	128	77
4th Ward	345	77
5th Ward	191	37
Rensselaerville	279	44
Watervliet	131	142
Coeymans	266	33
Berne	299	299
Bethlehem	293	303
Guilderland	176	152
Westerlo	252	56
	3012	1414
OTSEGO.		
Otsego	348	83
Butternutts	348	19
Worcester	216	1
Westford	150	61
Otego	185	
New Lisbon	260	7
Burlington	275	34
Plainfield	95	71
Maryland	195	35
Richfield	178	19
Middlefield	156	93
Springfield	85	157
Milford	149	21
Unadilla	181	2
Pittsfield	115	4
Cherry Valley	213	172
Edmeston	60	77
Lawrens	188	2
Exeter	98	28
Hartwick	311	59
Decatur	62	35
	3868	980

ULSTER.	Con.	No Con.
Kingston	114	3[illegible]
Hurley	35	16[illegible]
Saugerties	92	245
Marbletown	128	394
Plattskill	139	126
Marlborough	147	93
Woodstock	39	150
Rochester	22	185
Shandaken	46	67
Esopus	11	185
Wawasing	39	162
New Paltz	209	296
Shawangunk	203	246
	1224	2634

SULLIVAN.	Con.	No Con.
Thompson	253	3
Bethel	108	2
Mamakating	183	157
Liberty	48	49
Rockland	34	4
Lumberland	48	
Nevisink	2	108
	696	402

CHENANGO.	Con.	No Con.
Smithfield	118	22
German	166	13
Sherburne	101	129
Macdonough	90	3
Pharsalia	76	2
Greene	226	2
Bainbridge	181	2
Guilford	198	13
Otselie	27	59
Oxford	142	95
Smyrna	77	56
Plymouth	130	49
Lancaster	223	34
Norwich	360	21
Columbus	137	4
Preston	109	20
Coventry	64	48
	2425	572

COLUMBIA.	Con.	No Con.
City of Hudson	351	171
Kinderhook	183	127
Ancram	217	135
Ghent	124	149
Livingston	44	193
Clermont	72	58
Claverack	289	53
Taghkanick	176	249
Germantown	27	106
Chatham	196	66
Hillsdale	207	122
Canaan	89	62
New Lebanon	182	148
Austerlitz	78	231
	2235	1870

DELAWARE.	Con.	No Con.
Delhi	128	17
Kortright	213	55
Bovina	50	20
Walton	133	7
Stamford	102	22
Masonville	10	35
Franklin	43	110
Meredith	117	39
Andes	96	25
Middletown	91	58
Harpersfield	181	20
Sidney	35	17
Roxbury	151	35
Colchester	20	34
Davenport	12	10
	1482	504

RECAPITULATION.	Con.	No Con.
Orange	2470	1290
Greene	1112	1771
Schoharie	1634	1327
Ulster	1224	2634
Sullivan	696	402
Columbia	2235	1870
Albany	3012	1414
Chenango	2425	572
Otsego	3868	980
Delaware	1482	504
	20158	12764

EASTERN DISTICT.

SCHENECTADY.	Con.	No. Con.
1st Ward	114	131
2d Ward	146	146
Rotterdam	7	170
Glenville	111	183
Niskayuna	23	53
Princetown	28	73
Duanesburgh	222	123
	651	879

SARATOGA.	Con.	No. Con.
Ballston	252	11
Milton	418	4
Charlton	114	160
Malta	133	39
Waterford	192	11
Stillwater	191	60
Saratoga	278	7
Saratoga Springs	261	4
Greenfield	360	14
Galway	302	6
Providence	157	2
Edinburgh	178	1
Concord	77	
Corinth	179	2
Hadley	96	
Wilton	183	7
Moreau	167	30
Northumberland	151	1
Halfmoon	375	74
	4064	433

WASHINGTON.	Con.	No. Con.
Argyle	250	43
Fort Edward	156	23
Kingsbury	283	8
Fort Ann	266	10
Granville	363	43
Salem	248	126
Jackson	118	112
Hartford	178	74
White Creek	177	59
Hampton	126	1
Putnam	75	13
Cambridge	131	112
Hebron	189	95
Greenwich	329	23
Easton	346	10
Whitehall	202	2
	3537	754

WARREN.	Con.	No. Con.
Bolton	104	53
Queensbury	167	40
Caldwell	49	52
Johnsburgh	30	
Hague	72	
Chester	96	38
Warrensburgh	115	1
Athol	89	
Luzerne	173	
	945	184

JEFFERSON.	Con.	No. Con.
Le Ray	370	1
Champion	209	5
Pamelia	191	2
Watertown	240	4
Lyme	183	7
Hounsfield	309	5
Antwerp	196	3
Brownville	365	3
Rutland	282	
Wilna	50	9
Adams	259	8
Rodman	225	2
Ellisburgh	266	14
Henderson	221	2
Lorrain	66	54
	3432	119

LEWIS.	Con.	No. Con.
Pinckney	72	
Turin	135	6
Martinsburgh	212	2
Watson	26	7
Harrisburgh	51	8
Leyden	97	21
Denmark	179	25
Lowville	186	25
	958	94

FRANKLIN.	Con.	No. Con.
Malone	164	17
Fort Covington	102	11
Chateaugay	122	12
Constable	65	44
Bangor	48	3
Dickinson	87	
	588	87

MONTGOMERY.	Con.	No Con.
Palatine	123	282
Northampton	167	12
Johnstown	286	467
Broadalban	179	164
Florida	76	197
Canajoharie	348	122
Amsterdam	153	222
Wells	35	6
Charlestown	282	213
Oppenheim	42	297
Minden	136	137
Lake Pleasant	20	23
Hope	37	19
Stratford	31	18
Mayfield	104	159
	2019	2338

HERKIMER.	Con.	No Con.
Warren	115	166
Russia	43	117
Columbia	107	105
Winfield	121	12
Herkimer	247	85
Litchfield	120	32
Newport	140	84
Danube	85	312
Frankfort	193	6
German Flatts	119	210
Manheim	64	102
Salisbury	22	122
Schuyler	122	41
Fairfield	105	202
Norway	38	148
	1641	1744

ESSEX.	Con.	No Con.
Crownpoint	199	
Chesterfield	65	1
Essex	138	11
Elizabethtown	147	
Danville	93	
Jay	159	2
Keene	95	
Lewis	115	8
Moriah	89	8
Minerva	34	4
Scroon	135	
Ticonderoga	198	6
Wellsborough	141	5
Westport	159	
	1767	45

CLINTON.	Con.	No Con.
Beekmantown	192	
Champlain	104	
Peru	294	1
Mooers	68	1
Chazy	213	3
Plattsburgh	279	48
	1150	53

RENSSELAER.	Con.	No Con.
Schaghticoke	167	149
Lansingburgh	155	164
Pittstown	312	143
Brunswick	64	280
Hoosick	190	215
Grafton	125	77
Petersburgh	222	66
Sandlake	142	358
Berlin	320	16
Stephentown	309	14
Nassau	56	271
Schodack	138	260
Greenbush	185	199
Troy	606	126
	2991	2338

ST. LAWRENCE.	Con.	No Con.
Stockholm	124	
Gouverneur	18	34
Fowler	89	4
Massena	99	1
Parishville	122	
De Kalb	86	12
Pierrepont	48	
Morristown	65	47
Lisbon	114	1
Canton	165	30
Hopkinton	80	2
Louisville	90	4
Potsdam	199	7
Oswegatchie	175	11
Madrid	1147	14
Russell	41	35
	1722	210

RECAPITULATION.	Con.	No Con.
Schenectady	651	879
Warren	945	184
Jefferson	3432	119
Lewis	958	94
Franklin	588	87
Montgomery	2019	2338
Washington	3537	754
St. Lawrence	1722	210
Essex	1767	45
Rensselaer	2991	2338
Clinton	1150	53
Herkimer	1641	1744
Saratoga	4064	433
	25465	9278

WESTERN DISTRICT.

GENESEE.	Con.	No. Con.
Attica,	248	
Alexander,	163	20
Batavia,	402	2
Byron,	95	65
Bethany,	227	
Bergen,	97	26
Barre,	233	
Bennington,	136	4
Carrington,	284	9
China,	108	3
Clarendon,	158	1
Castile,	74	16
Elba,	172	3
Gaines,	164	
Gainesville,	132	3
Le Roy,	410	2
Middlebury,	290	2
Murray,	212	
Orangeville,	198	2
Pembroke,	306	2
Perry,	166	3
Ridgeway,	202	1
Sheldon,	105	23
Stafford,	280	1
Shelby,	152	1
Warsaw,	242	
	5[illegible]61	189

STEUBEN.	Con.	No. Con.
Bath,	217	3
Addison,	37	5
Hornellsville,	61	8
Pultney,	122	5
Painted-Post,	129	15
Prattsburgh,	159	6
Reading,	305	6
Jersey,	61	
Wheeler,	67	
Cohocton,	131	7
Troupsburgh,	79	
Wayne,	359	
Howard,	127	1
Dansville,	154	
	2008	56

ALLEGANY.	Con.	No. Con.
Caneadea,	89	
Rushford,	102	4
Ossian,	145	1
Independence,	69	2
Friendship,	98	
Angelica,	149	1
Nunda,	80	60
Alfred,	65	31
Centreville,	65	4
Almond,	75	24
Pike,	133	61
	1070	183

CATTARAUGUS.	Con.	No. Con.
Hinsdale,	42	
Olean,	59	5
Perrysburgh,	63	15
Great Valley,	29	1
Little Valley,	63	1
Ellicottville,	56	2
Freedom,	33	
Yorkshire,	42	2
Ischua,	65	1
	457	27

LIVINGSTON.	Con.	No. Con.
Lima,	158	3
Avon,	287	4
Caledonia,	71	37
York,	176	10
Geneseo,	134	23
Freeport,	154	
Sparta,	216	
Groveland,	150	
Springwater,	166	2
Livonia,	293	1
Mount-Morris,	117	2
Leicester,	187	3
	2109	85

CORTLAND.	Con.	No. Con.
Homer,	368	19
Solon,	123	7
Freetown,	68	
Cincinnatus,	89	5
Willett,	2[illegible]	18
Truxton,	286	1
Preble,	113	9
Scott,	93	
Harrison,	77	9
Virgil,	189	11
	1427	70

MONROE.	Con.	No. Con.
Parma	223	4
Sweden	136	19
Mendon	216	34
Perinton	198	
Riga	353	
Gates	217	6
Ogden	188	
Rush	80	4
Henrietta	246	6
Brighton	145	16
Penfield	227	39
Clarkson	142	11
Wheatland	142	3
Pittsford	111	57
	26 24	19[illegible]

ONTARIO.	Con.	No Con.
Benton	405	16
Canandaigua	503	8
Richmond	353	1
Seneca	428	21
Middlesex	277	6
Victor	259	3
Gorham	425	15
Bristol	221	22
Palmyra	284	11
Jerusalem	235	2
Naples	85	20
Lyons	300	31
Farmington	288	11
Italy	95	
Milo	283	
Bloomfield	350	63
Phelps	630	8
Williamson	162	47
Ontario	282	
Sodus	194	3
	6064	288

ERIE.	Con.	No Con.
Hamburgh,	201	49
Eden,	96	
Boston,	68	18
Holland,	117	
Wales,	112	40
Amherst,	87	3
Concord,	287	
Clarence,	367	11
Evans,	70	
Aurora,	61	163
Buffalo,	227	16
	1693	300

MADISON.	Con.	No Con.
Madison	275	11
Eaton	376	1
Nelson	205	50
Cazenovia	232	56
Georgetown	65	7
Lebanon	129	88
Brookfield	298	44
Hamilton	280	9
Lenox	310	2
Smithfield	280	42
Sullivan	340	6
De Ruyter	137	17
	2927	333

NIAGARA.	Con.	No Con.
Niagara,	92	
Cambria,	181	1
Lewiston,	148	
Wilson,	91	
Porter,	121	6
Hartland,	186	4
Royalton,	242	
	1061	11

ONEIDA.	Con.	No Con.
Rome,	354	22
Lee,	136	19
Western,	241	13
Vernon,	140	151
Deerfield,	103	81
Whitestown,	359	141
Augusta,	183	14
Utica,	244	64
Camden,	74	64
Westmoreland,	209	104
Floyd,	162	47
Bridgewater,	95	102
Trenton,	122	167
Steuben,	122	3
Paris,	272	409
Vienna,	80	71
Florence,	40	17
Verona,	180	50
Remson,	29	9
Sangerfield,	121	97
Boonsville,	54	44
	3320	1689

OSWEGO.	Con.	No Con.
Volney,	147	35
Williamstown,	62	26
Richland,	391	
Orwell,	67	8
New-Haven,	126	
Scriba,	108	
Constantia,	91	3
Redfield,	51	1
Mexico,	135	24
Granby,	56	
Hannibal,	136	
Oswego,	125	
	1495	97

CHAUTAUQUE.	Con.	No Con.
Chautauque,	92	10
Ellicott,	77	
Gerry,	130	1
Ripley,	69	18
Pomfret,	199	44
Stockton,	8	52
Clymer,	42	1
Hanover,	212	26
Portland,	122	15
Ellery,	80	8
Harmony,	103	2
	1134	177

BROOME.	Con.	No Con.
Union,	169	10
Berkshire,	170	4
Lisle,	226	13
Windsor,	97	129
Owego,	186	1
Chenango,	165	28
	1013	184

ONONDAGA.	Con.	No. Con.
Marcellus,	538	8
Onondaga,	319	28
Salina,	230	2
Manlius,	371	11
Lysander,	210	4
Camillus,	532	11
Otisco,	90	63
Pompey,	457	18
Spafford,	124	10
Fabius,	161	119
Tully,	75	26
Cicero,	117	6
	3224	306

TIOGA.	Con.	No. Con.
Spencer,	181	
Tiogo,	156	1
Cayuta,	287	
Candor,	92	3
Caroline,	198	16
Danby,	250	5
Elmira,	329	1
Chemung,	123	1
Catharine,	274	1
	1890	28

CAYUGA.	Con.	No. Con.
Cato,	141	
Aurelius,	967	5
Victory,	173	
Scipio,	584	33
Genoa,	234	9
Brutus,	461	5
Sempronius,	606	1
Mentz,	350	2
Owasco,	194	7
Conquest,	135	
Ira,	165	5
Locke,	319	5
Sterling,	117	
	4419	72

TOMPKINS.	Con.	No. Con.
Dryden,	448	6
Lansing,	365	2
Enfield,	179	
Groton,	317	3
Hector,	410	1
Ulysses,	335	3
Ithaca,	348	4
	2402	19

SENECA.	Con.	No. Con.
Junius,	399	55
Covert,	328	5
Wolcott,	261	6
Galen,	248	1
Fayette,	282	48
Ovid,	300	9
Romulus,	371	8
	2189	132

RECAPITULATION.	Con.	No. Con.
Monroe,	2624	199
Madison,	2927	333
Ontario,	6064	288
Seneca,	2189	132
Cayuga,	4449	72
Oneida,	3320	1689
Oswego,	1495	97
Chautauque,	1134	177
Onondaga,	3224	306
Tioga,	1890	28
Broome,	1013	184
Tompkins,	2402	19
Genesee,	5261	139
Niagara,	1061	11
Erie,	1693	300
Cortland,	1427	70
Livingston,	2109	85
Cattaraugus,	457	27
Allegany,	1070	188
Steuben.	2008	56
	47817	4450

STATE OF NEW-YORK—SECRETARY'S OFFICE,
Albany, August 28, 1821.

The Secretary of State being desirous of preserving in his Office a document containing not only the names of the members composing the present Convention of this State, but also such particulars concerning them as may be interesting to the future enquirer, will thank each gentleman of the Convention to sign his name on the following roll, and to insert opposite thereto in their proper column, the particulars therein mentioned.

J. V. N. YATES, *Secretary of State.*

☞ *The following is the document made out from the materials furnished pursuant to the foregoing request of the Secretary of State.*

Names of the Members of the Convention of 1821	Representing what County.	PLACE OF BIRTH. State or Country.	County.	City or Town	Age.	Condition in Life.	Profession or occupation.	From what European or Foreign Kingdom or country, their Ancestors came.
STEPHEN VAN RENSSELAER		New York	New-York	New-York	56	Married	Agriculture	Holland,
AMBROSE SPENCER	Albany.	New-York	Dutchess	Northeast	55	Married	Law	England.
JAMES KENT		New York	Putnam	South East	58	Married	Chancellor	England,
ABM VAN VECHTEN		New-York	Albany	Catskill	58	widower	Law	Holland,
CHARLES PUMPELLY	Broome.	Connecticut	Litchfield	Salisbury	42	Married	Merchant	Italy,
AUGUSTUS F. FERRIS		New-York	Westchester	S. Salem	38	Married	Farmer	France,
ROWLAND DAY	Cayuga.	Massachusetts	Hampshire	Wt. Springfield	41	Married	Merchant	England,
DAVID BRINKERHOOF		Pennsylvania	York	Mt Pleasant	45	Married	Farmer	Holland,
JARVIS K PIKE		New-York	Dutchess	Amenia	39	Married	Agriculture	England,
THOMAS HUMPHREY	Chenango.	Connecticut	Litchfield	Goshen	46	Married	Farmer	
NATHAN TAYLOR		Rhode-Island	Washington	Charleston	48	Married	Farmer	
NATHAN CARVER	Clinton and Franklin.	Massachusetts	Hampshire	Northampton	44	Married	Physician	England,
WILLIAM W. VAN NESS		New-York	Columbia	Claverack	46	Married	Law	Paternal Holland, Maternal France,
E. WILLIAMS		Connecticut	Windham	Pomfret	49	Married	Law	England
J. RUTSEN VAN RENSSELAER	Columbia.	New-York	Columbia	Claverack	54	Married	Law	Holland
FRANCIS SYLVESTER		New-York	Albany	Albany	51	Married	Law	Paternal England, Maternal Holland,
SAMUEL NELSON	Cortland.	New-York	Washington	Hebron	28	Married	Law	Ireland,
ERASTUS ROOT	Delaware.	Connecticut	Tolland	Hebron	48	Married	Law	England,
ROBERT CLARKE		New-York	Washington	Salem	41	Married	Physician	Scotland,
PETER R LIVINGSTON		New York	New-York	New-York	53	Married	Agriculture	Scotland,
ISAAC HUNTING		New-York	Suffolk	East Hampton	68	Married	Agriculture	England,
JAMES TALLMADGE, JUN.	Dutchess,	New-York	Dutchess	Stamford	43	Married	Law	England,
ABRAHAM H. SCHENCK		New-York	Dutchess	Fishkill	46	Married	Agriculture	England,
ELISHA BARLOW		Massachusetts	Barnstable	Sandwich	71	Married	Farmer	England,
AUGUSTUS PORTER	Erie, Chautauque,	Connecticut	Litchfield	Salisbury	51	Married	Agriculture	England,
SAMUEL RUSSEL	Niagara and Cattaraugus.	Connecticut	Hartford	Windsor	61	widower	Merchant	England,
REUBEN SANFORD	Essex.	Connecticut	New-Haven	Woodbury	40	Married	Farmer	England,
JOHN Z. ROSS		Connecticut	Litchfield	Kent	36	Married	Physician	Scotland,
DAVID BURROUGHS	Genesee.	New-Jersey	Cumberland	Deerfield	46	Married	Agriculture	England,
ELIZUR WEBSTER		Connecticut	Hartford	Glastenbury	54	Married	Farmer	England,
JEHIEL TUTTLE	Greene.	Connecticut	New-Haven	Wallingford	50	Married	Farmer	England.
ALPHEUS WEBSTER		Massachusetts	Bristol	Berkley	33	Married	Mechanick	England,
SHERMAN WOOSTER		Connecticut	New Haven	Waterbury	41	Married	Mechanick	England.
RICHARD VAN HORNE	Herkimer.	New-Jersey	Sussex		49	Married	Merchant	Holland.
SANDERS LANSING		New-York	Albany	Albany	54	Married	Law	Holland.
HIRAM STEELE	Jefferson.	Vermont	Orange	Randolph	32	Married	Merchant	England.
EGBERT TEN EYCK		New-York	Rensselaer	Schodack		Married	Law	Paternal Holland, Maternal Ireland.
JOHN LEFFERTS	Kings.	New-York	Kings	Flatbush	35	Single	Agriculture	Holland.
ELA COLLINS	Lewis.	Connecticut	New-Haven	Wallingford	35	Married	Law	England.
JAMES ROSEBRUGH	Livingston.	New-Jersey			54	Married	Agriculture	Ireland.
BARAK BECKWITH		Connecticut	New-London	Lyme	40	Married	Agriculture	England.
EDWARD ROGERS	Madison.	Connecticut	Litchfield	Cornwall	34	Married	Law	England,
JOHN KNOWLES		Connecticut	Hartford	Weathersfield	52	Married	Farmer	England,

JOHN BOWMAN	Monroe.	New-York	Dutchess	Peekskill	38	Married	Farmer	England
ALEX'R. SHELDON	Montgomery.	Connecticut	Hartford	Suffield	35	Married	Medicine	England
HOWLAND FISH		New-York	Dutchess	Washington	31	Married	Law	England.
JACOB HEES		New-York	Montgomery	Palatine	40	Married	Farmer	Germany.
WILLIAM IRVING DODGE		New-York	New-York	New-York	32	Married	Law	English and Scotch.
PHILIP RHINELANDER, JUN.		New-York	New-York	New-York	33	widower	Farmer	Germany.
JACOBUS DYCKMAN	New-York.	New-York	New-York	New-York	74	widower	Farmer	Holland.
JNO. L. LAWRENCE		New-York	New-York	New-York	35	Married	Law	Paternal England, Maternal Holland
NATHAN SANFORD		New-York	Suffolk	Southampton	43	widower	Agriculture	England.
JACOB RADCLIFF		New York	Dutchess	Rhinebeck	56	Married	Law	Paternal England, Maternal Holland.
PETER H. WENDOVER		New-York	New-York	New-York	54	Married	Merchant	England.
HENRY WHEATON		Rhode Island	Providence	Providence	35	Married	Law	Wales.
PETER SHARPE		New-York	Queens	Jamaica	43	Married	Mechanick	Paternal England, Maternal Holland
PETER STAGG		New-York	Rockland	Clarkstown	41	Married	Merchant	Paternal Scotland, Maternal Holland.
WILLIAM PAULDING, JUN.		New-York	Westchester	Greenburgh	51	Married	Law	Paternal Holland, Maternal England.
OGDEN EDWARDS		Connecticut	New-Haven	New-Haven	40	Married	Law	England.
JAMES FAIRLIE		New-York	Queens	Hempstead	63	Married	Law, Clk. S. C.	Paternal Scotland.
SIDNEY BREESE	Oneida, and part of Oswego.	Pennsylvania	Philadelphia	Philadelphia	52	Married	Law	Wales.
HENRY HUNTINGTON		Connecticut	New-London	Norwich	55	Married	Agriculture	England.
EZEKIEL BACON		Massachusetts	Suffolk	Boston	45	Married	Agriculture	England.
N. WILLIAMS		Massachusetts	Berkshire	Williamstown	47	Married	Law	Wales.
JONAS PLATT		New-York	Dutchess	Poughkeepsie	51	Married	Law	Paternal England, Maternal Holland.
PHILETUS SWIFT	Ontario.	Connecticut	Litchfield	Kent	57	Married	Agriculture	Paternal Ireland, Maternal England.
JOHN PRICE		Maryland	Frederick		47	Married	Agriculture	Germany.
JOSHUA VAN FLEET		New-York	Orange	Minisink	57	Married	Agriculture	Holland.
MICAH BROOKS		Connecticut	New-Haven	Cheshire	46	Married	Agriculture	England.
DAVID SUTHERLAND	Onondaga and part of Oswego.	New-Jersey			66	widower	Agriculture	Scotland.
ASA EASTWOOD		New-Jersey	Monmouth	Allenstown	39	Married	Agriculture	England.
VICTORY BIRDSEYE		Connecticut	Litchfield	Cornwall	38	Married	Law	England.
PARLEY E. HOWE.		Rhode Island	Providence	Smithfield	53	Married	Agriculture	England.
AMERI CASE	Orange.	Connecticut	Hartford	Canton	53	Married	Farmer	England.
B. WOODWARD		New-York	Orange	Walkill	41	Married	Farmer	England.
PETER MILLIKEN		New-York	Orange	Montgomery	47	Married	Farmer	Ireland.
JOHN HALLOCK, JUN.		New-York	Orange	Minisink	36	Married	Agriculture	England.
JNO. DUER	Otsego.	New-York	Albany	Albany	39	Married	Law	England.
JOSEPH CLYDE		New-York	Otsego	Cherry-Valley	47	Married	Agriculture	Paternal Scotland, Maternal England.
RANSOM HUNT		New-York	Dutchess	Dover	52	Married	Farmer	Ireland
WILLIAM PARK		Connecticut	New-London	Preston	39	Married	Farmer	Scotland.
DAVID TRIPP		Rhode-Island	Kent	W. Greenwich.	53	Married	Farmer	England.
M. V. BUREN	Putnam.	New-York	Columbia	Kinderhook	38	widower	Law	Holland.
JOEL FROST		New-York	Putnam	Carmel	56	Married	Merchant	England.
RUFUS KING	Queens.	Maine	Cumberland	Scarborough	65		Agriculture	England.
NATH'L. SEAMAN		New-York	Suffolk	Southampton	41	Married	Agriculture	England.
ELBERT H. JONES		New-York	New-York	New-York	48	Single	Agriculture	Paternal Wales, Maternal Holland.
DAVID BUEL, JUN.	Rensselaer.	Connecticut	Litchfield	Litchfield	36	Married	Law	Wales.
JOHN REEVE		New-York	Suffolk	Southhold	56	Married	Merchant	England.
JIRAH BAKER		Rhode-Island	Washington	S. Kingston	57	Married	Farmer	England.
JOHN W. WOODS		Massachusetts	Middlesex	Marlborough	69	Single	Farmer	England.
JAMES L. HOGEBOOM		New-York	Rensselaer	Claverack	55	Married	Merchant	Pat. Holland, Mat. France & Spain.

DANIEL D. TOMPKINS	Richmond.	New-York	Westchester	Scarsdale	47	Married	Law	Paternal England, Maternal Scotland.
SAMUEL G VERBRYCK	Rockland.	New-York	Rockland	Orangetown	60	Married	Agriculture	Holland.
JEREMY ROCKWELL		Connecticut	Fairfield	Norwalk	55	Married	Agriculture	
JNO CRAMER	Saratoga,	New-York	Saratoga	Saratoga	42	Married	Law	Germany
SALMON CHILD		Connecticut	Windham	Woodstock	56	Married	Farmer	Paternal England, Maternal Wales.
SAMUEL YOUNG		Massachusetts	Berkshire	Lenox	42	Married	Law	England.
JOHN SANDERS		New-York	Schenectady	Schenectady	64	Married	Agreulture	Scotland.
HENRY YATES, JUN.	Schenectady.	New-York	Schenectady	Schenectady	50	Married	Law	Paternal England, Maternal Holland.
ASA STARKWEATHER		Connecticut	New-London	Preston	39	Married	Mechanic Art	England.
OLNEY BRIGGS	Schoharie.	Massachusetts	Berkshire	Cheshire	46	Married	Mechanic	England.
JACOB SUTHERLAND		New-York	Dutchess	tanford	32	Married	Law	Scotland.
JASON FENTON	St. Lawrence:	Massachusetts	Worcester	Charlton	47	Married	Mechanic	England.
TIMOTHY HURD	Steuben and	Connecticut	Litchfield	Roxbury	46	Married	Farmer	England.
JAMES M'CALL	Allegany.	New-York	Albany	New-Lebanon	43	Married	Farmer	Ireland.
JONAS SEELY		New-York	Orange	Goshen	45	Married	Farmer	England.
ROBERT S. ROSE	Seneca.	Virginia	Henrico		47	Married	Agriculture	Scotland.
EBENEZER SAGE		Connecticut	Middlesex	Chatham	66	Married	Physician	England.
JOSHUA SMITH	Suffolk.	New-York	Suffolk	Smithtown	53	widower	Farmer	England.
USHER H. MOORE		New-York	Suffolk	Riverhead	53	Married	Farmer	Ireland.
MATTHEW CARPENTER	Tioga.	New-York	Orange	New-Cornwall	62	Married	Farmer	England.
RICHARD TOWNLEY		New-Jersey.	Essex	Newark	58	Married	Farmer	England.
RICHARD SMITH	Tompkins.	Connecticut	Litchfield	Salisbury	40	Married	Farmer	Great-Britain.
JAMES HUNTER		New-York	Ulster	Shawangunk	77	Married	Farmer	Ireland.
JONATHAN DUBOIS	Ulster and Sul-	New-York	Ulster	New Paltz	57	Married	Farmer	France.
HENRY JANSEN	livan.	Died	suddenly in the	Capito, Sept. 13	43		Farmer	
DANIEL CLARK		New-York	Ulster	Newburgh	51	Married	Farmer	England.
MELANCTON WHEELER		New-York	Suffolk	Huntington	51	Married	Farmer	England.
NATHANIEL PITCHER		Connecticut	Litchfield	Washington	43	widower	Farmer	England.
JOHN RICHARDS	Washington & Warren.	Wales	Merioneth	Llannwchlyn	56	Married	Farmer	Wales.
ALEXANDER LIVINGSTON		New-York	Washington	Greenwich	52	Married	Farmer	Scotland.
WM. TOWNSEND		New-York	Rensselaer	Greenbush	37	Married	Farmer	England.
JONATHAN WARD		New-York	Westchester	Eastchester	53	Married	Farmer	Ireland.
PETER AUGUSTUS JAY	Westchester.	New-Jersey	Essex	Elizabethtown	45	Married	Law	France.
PETER JAY MUNRO		New-York	Westchester	Rye	54	Married	Law	Pat Scotland, Mat. France & Ireland.
JOHN F. BACON	Secretaries.	Massachusetts	Berkshire	Stockbridge	32	Married	Law	England.
SAMUEL S GARDINER		New-York	Suffolk	Easthampton	30	Single	Law	England.
HENRY FRYER	Sergeants at Arms.	New York	Albany	Albany	40	Married	Mechanic	England.
LOUIS LE COUTEULX		France	Normandy	Rouen	65	Married	Merchant	France.
HENRY BATES	Door-Keepers,	Massachusetts	Hampden	Springfield	36	Married	Merchant	England.
JNO. BRYAN		New-York	New-York	New-York	56	Married	Mechanic	Paternal Ireland, Maternal England.
RICHARD TEN BROECK		New-York	Albany	Albany	42	Married	Merchant	Paternal Holland, Maternal Ireland.
JOHN COOK	State Librarian.	England	Middlesex	London	57	Married	Mechanic Arts	England.

The Convention consisted of one hundred and twenty six members, all of whom, without exception, attended on the third day of the session—Every member of that body (except one) was a native American citizen.

66	were born in the	state of	New-York.
32	do.	do.	Connecticut.
9	do.	do.	Massachusetts.
7	do.	do.	New Jersey.
5	do.	do.	Rhode-Island.
2	do.	do.	Pennsylvania.
1	do.	do.	Vermont.
1	do.	do.	Maryland.
1	do.	do.	Virginia.
1	do.	do.	Maine.
1	do.	do.	Europe, (viz. Wales.)

Of that number	68	were	Farmers.
	37	do.	Lawyers.
	9	do.	Merchants.
	7	do.	Mechanics.
	5	do.	Physicians.

The paternal ancestors of	68 were inhabitants of	England.
	18	Holland.
	14	Scotland.
	9	Ireland.
	5	Wales.
	4	Germany.
	3	France.
	1	Italy.
	4	Unknown.

Between the age of 21 and 30	years	there was,	1
30 and 40	do.	were	23
40 and 50	do.	do.	45
50 and 60	do.	do.	45
60 and 70	do.	do.	9
70 and 80	do.	do.	3

There were forty-three gentleman in that body, who took parts in the discussions.

Among the most conspicuous speakers were Messrs. Bacon, Birdseye, Briggs, Buel, Burroughs, R. Clarke, Cramer, Dodge, Duer, Edwards, Fairlie, Hogeboom, Jay, Kent, King, P. R. Livingston, Munro, Platt, Radcliff, Root, Russell, Sharpe, N. Sanford, I. Sutherland, Spencer, Tallmadge, Tompkins, Van Buren, Van Ness, J. R. Van Rensselaer, Van Vechten, Wheeler, E. Williams, N. Williams, and Young.

The Constitution was drafted at the house of Mr. Lemet in State-Street—The first committee, who digested and prepared the different articles, were Messrs. Yates, King, Van Buren, Root, I. Sutherland, Lawrence, and Kent.—Mr. Kent having left town before the articles were reported, Mr. Jay was appointed in his stead.

This committee met at Mr. Cruttenden's opposite the park.

The last committee were Messrs. N. Sanford, Buel, and Wheaton, who met at Mr. Lemet's, and their report was made the basis of the amended constitution in its present form.

Mr. Fairlie, Mr. Young, and Mr. Van Ness, were appointed to superintend the engrossing and printing of the constitution.

The engrossing was attended to by them ; but the printing was referred to the Secretary of State.

Mr. L. H. Clark, one of the reporters, engrossed the constitution on parchment.

It is proper to add, that during the session of the Convention, one of its members (Mr. Jansen of Ulster and Sullivan) suddenly expired while in the hall of the Capitol.

CONSTITUTION OF 1777.

For the following historical recollections of the convention of 1776 and 1777, which formed and established the existing constitution of this state, the compilers are indebted to a writer in the New-York Columbian, under the signature of *Schuyler*, who derived his information from the original papers, now in the hands of John M'Kesson, Esq. of New-York, a nephew of one of the secretaries. These memoranda may be relied on as authentic ; and are deemed to be of sufficient interest, to entitle them to a place in the appendix to this volume, with the subject of which they are intimately connected :

"It will be seen, that, by the second resolution of the seventh recital in the constitution, (1 Revised Laws, p. 30,) the deputies to be elected to form a constitution, were to meet at the city of New-York by the second Monday of July, 1776. This was recommended by the resolution of the Congress of the Colony of New York, May 31st, 1776—and that Provincial congress continued to sit through the month of June. When this congress dissolved or adjourned, as mentioned below, there was no other body to exercise the powers of civil government but the Convention which succeeded it, which being elected for the double purpose of a Convention and legislature, (or rather committee of safety,) organized itself at first under the title of the Provincial Congress of the Colony of New-York—And during this year, and part or all the preceding year, down to the time of organizing a new government under our present constitution in September, 1777, there are no regular printed journals, as there were before and since this gloomy period.

The last body called the Colonial congress, sat till the 30th day of June, 1776, in this city. On that day (Sunday) in the afternoon, under the apprehension that the enemy might ere long attack New-York, this congress resolved that the next Provincial congress should meet at White Plains, in the county of Westchester—and then adjourned.

On the 9th July, 1776, the newly elected deputies (or delegates) assembled at White Plains, (probably not having enough to form a house on the 8th) and elected Gen. Woodhull, president of the Convention. In the forenoon of that day, a letter was received from the delegates of this state in the Congress of the United States, enclosing the Declaration of AMERICAN INDEPENDENCE ! It was immediately read, and referred to a committee consisting of Messrs. Jay, Yates, Hobart, Brashier, and Wm. Smith.

At the opening of the afternoon session, the same day, the said committee reported resolutions concurring in the reasons set forth in the recitals of said declaration, fully adopting that instrument, and instructing our delegates in the General Congress to support the same, and to give their united support to all necessary and proper measures to obtain the objects of said Declaration. This report was at once adopted by the Convention.

In the forenoon of the next day (the 10th,) this body "Resolved and ordered, That the style and title of this house be changed from that of "The Provincial Congress of the colony of New-York," to that of "The CONVENTION of the Representatives of the state of New-York." This is the first moment we assumed the name of a state ; and the 10th day of July, 1776, may be considered the Birth-day of New-York, as an INDEPENDENT STATE.

Accordingly, in the afternoon of the same (10th) day, the said Convention of the now STATE of New-York, Resolved, that, pursuant to the former resolutions of the General and Provincial Congress, (1 R. L. pp. 29, 30, 31,) the subject for establishing a form of government should be taken up in convention on the 16th day of said month of July.

But on the arrival of the said (16th) day, it being expected, from information, that the enemy had entered New-York, and on account of a great pressure of urgent business, the subject was postponed to the 1st of August then next; and in the mean time, all magistrates and civil officers well affected towards the cause of Independence, were, by a resolve of the Convention, desired to continue the exercise of their duties, until further orders, as they heretofore had done, except that all process should hereafter be issued in the name of the *State of New-York*.

On the 1st of August, 1776, on motion of G. Morris, seconded by Mr. Duer, a Committee was appointed to prepare and report a constitution or form of government. This committee consisted of the following gentlemen, viz:—

Mr. Jay,	Gen. Scott,
Mr. Hobart,	Mr. Abm. Yates,
Mr. Wm. Smith,	Mr. Wisner, senr.
Mr. Duer,	Mr. Sam'l Townsend,
Mr. G. Morris,	Col. De Witt, and
Mr. R. R. Livingston,	Mr. Robert Yates.
Col. Broome,	

The committee were required to report on the 16th of said month. But owing to the perilous situation of the state, and the distracted state of affairs in various parts of the country, little or nothing appears to have been done in convention on this subject, though the committee was probably much engaged upon it—for on the 5th of Dec. 1776, I find the Convention sitting at Fishkill, with Gen. Ten Broeck as President. On that day, I find it recorded, that "the committee appointed to prepare a form of government, and other members, having withdrawn, the remainder acted as a committee of safety."

This had been the case before from the early part of August 1776, to February or March, 1777, the convention had been obliged frequently to change its place of meeting—its members sometimes serving with the troops in the field, sometimes returning home, and others being elected, some despatched on other trusts, and sometimes not enough left to transact business. In fact, such was the alarming situation of affairs, that at certain periods the convention was literally driven from pillar to post, while it had alternately to discharge all the various and arduous duties of legislators, soldiers, negotiators, committees of safety, committees of ways and means, judges and jurors, fathers and guardians of their own families, flying before the enemy, and protectors of an invaded commonwealth. At one time they assembled at Harlaem, next at Kingsbridge, then at Odell's in Philip's manor—at Fishkill, White Plains, Poughkeepsie, and Kingston; and in one instance, only three members could be assembled together.

The proceedings of the Convention, therefore, were *chiefly* as a committee of safety, till March 1777.—On the 6th of that month, at Kingston, (Gen Ten Broeck, President,) the committee, appointed to prepare a form of government was required to report on the following Wednesday: and on that day, (12th March, 1777,) said committee reported a plan or form of government, which was read by Mr. Duane. This draft was chiefly or wholly drawn up by Mr. Jay, and is in his handwriting. There were annexed to it "Addenda," which I believe are chiefly in the handwriting of Mr. Duane, and were mostly framed by him: for although he was not originally on the committee, he must have been put on it afterwards, and I believe some others also.

This draft of a constitution was from that time under consideration, discussion and revision, in the Convention till the 20th day of April, 1777, and underwent some amendments, though not very many material ones. These amendments and alterations were mostly introduced and supported by Mr. Jay, Mr. Duane, Mr. G. Morris, Mr. R. R. Livingston, and a few others; but the most considerable part of the constitution now stands as it came from the hands of Mr. Jay. On the said 20th of April, at Kingston, (Leonard Gansevoort, President, *pro. tem.*) the constitution as it now stands, was adopted with but one dissenting voice!!

The following list is believed to contain the whole numbers of member elected. In the *first* or *left hand* column are placed the names of those who are found to have attended the Convention at any time from the day the constitution was reported by the select committee till its adoption—that is, from the 6th of March to the 20th of April, 1777, inclusive. In the *second* or *right hand* column are placed those who are not found to have attended at all during that period, though they had been more or less in the Convention before, and some of them were members of the said select committee.

NEW-YORK.

Attending in March and April.		*Not attending same time.*	
John Jay,		Jacobus Van Zandt,	
James Duane,		Abraham Brashier,	
John Morris Scott,		Comfort Sands,	
James Beekman,		Henry Remsen,	
Daniel Dunscomb,		Garrit Abeel,	
Robert Harper,		John Broome.	6
Philip Livingston,			
Abraham P. Lott,			
Peter P. Van Zandt,			
Anthony Rutgers,			
Evert Bancker,			
Isaac Stoutenbergh,			
Isaac Roosevelt,			
John Van Courtlandt,			
William Denning	15		
ALBANY.			
Abraham Ten Broeck,			
Robert Yates,			
Leonard Gansevoort,			
Abraham Yates, jun.			
John Ten Broeck,			
John Tayler,			
Peter R. Livingston,			
Robert Van Rensselaer,			
Matthew Adgate,			
John I. Bleecker,			
Jacob Cuyler.	11		
DUTCHESS.			
Robert R. Livingston,		Nathaniel Sackett,	
Zephaniah Platt,		Dr. Crane,	
John Schenck,		Mr. Hopkins.	3
Jonathan Landon,			
Gilbert Livingston,			
James Livingston,			
Henry Schenck.	7		
ULSTER.			
Christopher Tappen,		Levi Pawling,	
Matthew Rea,		Henry Wisner, jun.	2
Matthew Cantine,			
Charles De Witt,			
Arthur Parks.	5		
WESTCHESTER.			
Pierre Van Courtlandt,		Lewis Morris,	
Gouverneur Morris,		William Paulding,	
Gilbert Drake,		Mr. Haveland.	2
Lewis Graham,			
—— Lockwood,			
Zebadiah Mills,			
Jonathan Platt,			
Jonathan G. Tompkins.	8		
ORANGE.			
William Allison,		John Haring,	
Henry Wisner,		Mr. Little,	
Jeremiah Clarke,		David Pye,	
Isaac Sherwood,		Thomas Outwater.	4.
Joshua H. Smith,	5		
SUFFOLK.			
William Smith,		Nathaniel Woodhull,	

Thomas Tredwell,
John Sloss Hobart,
Matthias Burnet Miller,
Ezra L'Hommedieu. 5

Thomas Deering,
David Gelston. 3

QUEENS.

Jonathan Lawrence, 1

Rev. Mr. Kettletas,
Samuel Townsend,
James Townsend,
Mr. Van Wyck,
Col. Blackwell, 5

TRYON.*

William Harper.
Isaac Paris,
Mr. Veeder,
John Moore,
Benjamin Newkerk, 5

CHARLOTTE,*

John Williams,
Alexander Webster,
William Duer. 3

CUMBERLAND*.

Simeon Stephens. 1

Joseph Marsh,
John Sessions, 2

GLOUCESTER.*

Jacob Bayley,
Peter Olcott. 2

KINGS AND RICHMOND.

It does not appear from any entry on the journals, or from any papers now to be found, that the members elected in these two counties, (if any) ever attended the provincial congress, or the Convention, after the 30th June, 1776. Before that period I find that Messrs. Bancker and Lawrence were in the provincial congress, from Richmond; and in the month of June, 1776, I find that Messrs. Journey, Conner, and Cortelyou were occasionally attending from *Richmond*, and Messrs. Lefferts, Polhemus, and Couenhoven, from *Kings*.

So that the whole number elected to the Convention was 96—the number of those who attended while the Constitution was under consideration, is 66. But no inference unfavourable to the patriotism or punctuality of the other 30 is justly to be drawn from the circumstance of their non-attendance at this period; any more than against Messrs. L'Hommedieu and Tompkins, who attended but two or three days, or against Messrs. Duer, Jonathan Platt, and John Van Courtlandt, who attended but four or five days during said time. For many of the members elected were soon after appointed to other offices, or sent on other urgent business, some of which required their occasional, and some their whole attention. Mr. Comfort Sands was, soon after the Convention met, appointed auditor general of the state, and in addition to that arduous duty, was afterwards directed to act as paymaster-general. Mr. A. Yates, jun. and Mr. Tayler, (the present lieutenant-governor) who attended but eight or ten days of the aforesaid period, were on other important business; at one time as a committee from the Convention, waiting on General Washington, General M'Dougall, and other commanding officers, at their head quarters.

General Woodhull had been slain on Long-Island, in the invasion of the British in August, 1776; some members were appointed to oversee the building of vessels; some to procure ammunition and arms; some to attend the armies; and some sitting as a committee of safety, while the main body were de-

* Tryon county consisted of the territory westward of the *then* county of Albany, and Charlotte county of all northward of the same. The former was afterwards called *Montgomery*, the latter *Washington*. Cumberland and Gloucester counties consisted of the territory, then called the New-Hampshire Grants, and now constituting the state of Vermont. The whole population of the state at that time, did not exceed 200,000.

liberating as a Convention. The members from Queens were in general necessarily detained from the Convention by the peculiar situation of Long-Island. Col. (afterwards Gen.) Bayley, of Gloucester county, was mostly employed in protecting and defending the frontier on Connecticut river against the Indians; and some of the members of this Convention were at the same time delegates to the *Continental Congress*, especially Messrs. Jay, Duane, and R. R. Livingston. And there is little doubt, that all the difficulty relative to the names of the members of congress who signed the Declaration of Independence, and the others not signing it who were members, and who signed it, though not in their places on the 4th of July, (which has caused so much newspaper discussion) could be solved at once, if *all the facts* in relation to the occasional non-attendance of some members, and absence of the *signatures* of others, could be *minutely and truly* ascertained.

The late chancellor Livingston is well known to have been sent from congress into this state to prepare the minds of the people for the Declaration of Independence. Gen. George Clinton was sent hither from congress to take the field; and Mr. Jay was probably in congress when the Convention (6th March) required the committee, of which he was chairman, to report their plan of government, and we find him attending the Convention soon after the report was brought in by Mr. Duane, and from that time till the Convention dissolved. Col. Broome, Gen. Scott, and others were also in the field with their troops, except when the situation of the enemy safely permitted their attendance in the Convention.

Of this list of members of that Convention, I believe but seven or eight are now living. One of these has obligingly given me his assistance in naming the survivors, who are Messrs. Jay, Tayler, (our lieutenant-governor,) J. C. Tompkins, (father of the Vice-President) Wm. Paulding,) father of General Wm. Paulding, jun. of this city) C. Sands, C. Tappen, and D. Gelston".

The original constitution of 1777, as engrossed by the secretary, and signed by the President, *pro tempore*, has lately been deposited in the office of the secretary of state. It is in a shattered condition, with many interlineations and erasures. Some of the articles are written in the margin, and the 27th and 28th sections, as well as a part of the preamble, are wanting, having been written, as is supposed, on detached pieces of paper, which may hereafter be found among the original minutes.

By the politeness of Mr. Yates, secretary of state, the compilers have been able to add the following interesting particulars, contained in a letter from John M'Kesson, Esq. under date of November 3d, 1821:—

" The constitution was passed on the evening of Sunday the 20th of April, the President, General Ten Broeck, being absent, and the Vice-President, General Pierre Van Cortlandt, being detained by adverse weather on the opposite side of the river—General Leonard Gansevoort acting as President, *pro tem.*

The secretaries have concurred in stating, that they used all their influence to prevent the final question being met that evening, the President and Vice-President being absent, and as they wished to engross a proper copy for signature. Their remonstrance, however, was unavailing. The question was put and carried with but one dissenting voice, and the draft under discussion, which had been amended during the day, was signed by the president, *pro tem.* The secretaries, indulging some feeling on the occasion, did not countersign said draft, which accounts for the original and the copies therefrom not having their attestation.

The same night the constitution was adopted, the Convention appointed Robert R. Livingston, General Scott, Mr. Morris, Mr. Abraham Yates, Mr. Jay, and Mr. Hobart, a committee to report a plan for organizing and establishing the form of government.

They next directed, that one of their secretaries should proceed to Fishkill, and have five hundred copies without the preamble, and two thousand five hundred with the preamble, printed; and instructed him to give gratuities to

the workmen to have it executed with despatch. My deceased uncle undertook this duty.

They then resolved, that the constitution should be published at the Court House, in Kingston, on Tuesday morning, then next; of which the committee of Kingston were notified. This duty was performed by Robert Benson, the other secretary, from a plat-form erected on the end of a hogshead, Vice-President Cortlandt presiding. From this time to the 8th of May, the Convention were occupied for the public safety. On that day, they promulgated their ordinance for organizing and establishing the government, having in the mean time filled up provisionally the offices, necessary for the execution of the laws, distribution of justice, and holding elections."

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