New Jersey. Constitutional convention, 1844
G S.

PROCEEDINGS of the New Jersey State CONSTITUTIONAL CONVENTION of 1844

Compiled and Edited by the New Jersey Writers' Project of the Work Projects Administration with an Introduction by JOHN BEBOUT

Sponsored by the New Jersey State House Commission • 1942

US/NJ
103
E44/F42

342.103
844

Contents

PREFACE v

INTRODUCTION vii

1. Constitutions and Their Makers vii
2. Colonial Constitutions xii
3. The Constitution of 1776 xvi
4. Constitutional Principles xix
5. Toward a New Constitution xxxvii
6. The Convention of 1844 lxv
7. The Constitution of 1844 xcvi
8. Postscript on Attempts to Change the Constitution of 1844 civ

Notes cix

PRELIMINARIES 1

The Constitution of 1776 1
Governor's Message 7
Vote on Constitution Bill 7
Constitution Act 8
Governor's Proclamation 12
Party Compromise 13

THE PROCEEDINGS 15

BIOGRAPHIES OF DELEGATES 637

INDEXES 645

580561

NEW JERSEY STATE LIBRARY
STATE-WIDE SPONSOR OF THE NEW JERSEY WRITERS' PROJECT

FEDERAL WORKS AGENCY
JOHN M. CARMODY, *Administrator*

WORK PROJECTS ADMINISTRATION
HOWARD O. HUNTER, *Commissioner*
FLORENCE KERR, *Assistant Commissioner*
ROBERT W. AILAN, *State Administrator*

NEW JERSEY WRITERS' PROJECT
VIOLA L. HUTCHINSON, *State Supervisor*

Preface

Preface

This book is the work of many minds and hands. Its principal authors are the 58 members of the New Jersey constitutional convention of 1844. Their words would have died with them, however, had it not been for the remarkably full, frequently verbatim, newspaper accounts of their debates, especially those appearing in the two dailies, *The Newark Advertiser* and *The Trenton State Gazette*. The newspapermen of 1844 are, therefore, in a real sense the "ghost writers" of this volume.

For almost one hundred years these press accounts have been yellowing with age in a few libraries. Only an occasional student or lawyer has thumbed through them in hope of finding support for a thesis or for a point of constitutional law. To the public generally, the deliberations of the convention which produced our present State constitution have been literally an unwritten book. The Service Division of the Work Projects Administration in New Jersey now gives this book to the people of New Jersey.

This publication was first suggested in 1936 by Prof. John Bebout, of the University of Newark, and for a time Executive Assistant of Governor Charles Edison. The laborious work of transcribing all the available newspaper stories bearing on the proceedings of the convention was begun, and WPA Writers' Project workers throughout the State were directed to collect all possible data on the biographies of the convention delegates. The material thus assembled has been carefully sifted, checked, collated and edited.

It is possible to name here only those who have been most responsible for the form and content of the finished book. The initial task of collating the several newspaper accounts with one another and with the official Journal, of reconciling discrepancies and preparing a composite text, was performed almost single-handed by Herman Beyer. Mr. Beyer, a newspaperman whose active career in journalism measures half a century of experience in reporting State government and

politics, did this work with meticulous and loving care. This text was checked against the original sources, principally by Gertrude Tubby. Miss Tubby also carried the brunt of the burden of supervising the preparation of the index and the final editing.

The planning and editing of the book were carried out under the immediate supervision of Benjamin Goldenberg and Irving D. Suss, State Editors, and Viola L. Hutchinson, State Supervisor of the WPA Writers' Project. Professor Bebout kept in constant touch with the project and contributed the introductory essay and, as advisory editor, freely gave invaluable advice and assistance at all stages of the work.

GUSTAVE KOEPPE.

The Writers' Project, which contributes this volume as its final effort, has been concerned primarily with presenting a visual and factual picture of New Jersey's varied scene. Under the successive supervision of Burton Kline, Irene Fuhlbruegge and Viola L. Hutchinson the Project has written many guides to and histories of New Jersey localities as well as accounts of famous people, places and events of the State for use in the public schools and libraries.

The Historical Records Survey, of which the Writers' Project recently became a part, has issued numerous reference volumes pertaining to New Jersey history and government. A vast bibliography of research and reference data was produced by the Survey under the successive direction of John A. Millington, Carl J. Bostelmann and Gustave Koeppe, State Supervisors. In the final editions of the extensive series, now curtailed by the war redirection of the Survey, every effort has been made to publish all work essential to a basic approach to an analysis of New Jersey government. In the final stage of this endeavor the joint enterprise of Louis A. Lupton and Jean L. Saville has played a leading part.

Introduction

Introduction

1. CONSTITUTIONS AND THEIR MAKERS

"I see no reason why we may not form a Constitution which will be a model for other States and other Countries. . . . It has been asked if these debates will be of any value hereafter? Yes, sir! . . . If this Constitution lives half a century as I doubt not it will, and a question arises as to the construction of any part of it, they will then be of great value. Language is continually changing, the meaning of words is changing. . . ."

Richard S. Field in support of an unsuccessful motion to engage a stenographer to take a verbatim report of the debates in the convention.

Written constitutions have a peculiar glamour for us Americans. There are many reasons for this; but one is undoubtedly the veil of obscurity which, for the general public at least, has been cast about the origin of many of our constitutional documents.

It was 53 years after the writing of the United States Constitution at Philadelphia in 1787 before the publication of Madison's *Notes* gave us a fairly definitive account of what went on in the greatest of all constitutional conventions. The people of New Jersey have had to wait 99 years for this volume to give them an intimate view of the debates in their own convention of 1844.

It is true that, unlike the secret sessions of the Philadelphia convention, our convention was open to the press. Newspaper reports are all too soon forgotten, however, even by those who read them, and in the century since their publication the accounts of the debates in the 1844 convention have been consulted only by an occasional scholar or antiquarian and by a few especially diligent writers of legal briefs.

The mystery which constitutional origins hold for "the man in the street" has helped to transfer to our basic documents some of that divinity which formerly did "hedge about a king." This is especially true of New Jersey and a few of the older states which have been less

given to amending, revising and expanding their constitutions than most of their younger sisters.

Few students of affairs will deny the utility of some symbolic "ark of the covenant" to give unity and stability to the commonwealth. On the other hand, adaptability to the changing needs and desires of the community are equally essential to a long-lived and peaceful regime. In modern times, it has been the dynasties which have not presumed too much on their divinity but have been ready to take a hint from the present and the future that have survived.

In like manner, the United States Constitution, which is the oldest and most revered written constitution now in force, has proved to be one of the most adaptable fundamental laws. (The constitutions of Massachusetts and New Hampshire bear earlier dates; but they have been more drastically changed by amendment.) It is safe to say that the increasing knowledge both of the origins and of the life history of the United States Constitution has helped to preserve its prestige and its essential integrity by showing how it could properly be applied in a changing world.

The present volume should help the people of New Jersey to a more usable knowledge of their own constitution. Perhaps that knowledge will help them to operate it more satisfactorily and to live under it more comfortably. Perhaps it will help them to decide what if any changes should be made in it in order to give its more durable principles the surest opportunity to continue to guide the State. At any rate, it should help to dispel any superstitious wonder which may exist about the sources and original purposes of a number of the more controversial provisions of our present constitution.

A written constitution is in a sense no constitution at all. It is rather a reflection in words of a living constitutional order. "But," as James Madison once wrote, "no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas." Consequently, it is necessary to observe a constitution in operation in order to learn the meaning of the phrases in which men have tried to set it down.

A constitution is composed and molded by living men, conditioned by their past experience and moved by their hopes and fears for the future. The first step, therefore, in the study of a constitutional document is to find out what its principal authors and interpreters have known or thought about the past and have dreamed or guessed about the future.

The debates in the convention of 1844 throw a great light on the essential views and attitudes of the members of the convention and of their predecessors in the molding and interpretation of the New Jersey constitution. We speak of "their predecessors" because the New Jersey constitution was not "made" in 1844. It was renovated, rather, or refurbished. A constitutional convention in an established state not in the throes of violent revolution is merely an incident or episode in the life of a constitutional system. It is essentially a method for expediting, refining and confirming constitutional developments which have been going on in the minds and often in the customs of the community for years. It may make innovations; but many innovations are likely to be largely verbal. They may supply omissions or correct errors or difficulties resulting from the vagueness or inconsistency of the ideas or the language of the authors of the old constitution. Or they may be intended to reinforce old rights, to eliminate an outworn or inconvenient procedure or restraint, or to provide a better way of doing an old job. The parts of the old constitution which have worn well and still seem to fit are usually preserved, and changes and additions are made where experience suggests that the old may be defective or inadequate. The changes may not always be wise; the point is that they are made with reference to experience with the old document. This fact alone guarantees an essential continuity in constitutional history.

The careful reader of the 1844 debates will come to realize that most of the major decisions of the convention were predestined before the delegates assembled. For example, the appointing power of the legislature was certain to be diminished, although it would have been impossible to predict the precise extent and nature of this reform. The meeting and clash of minds in the convention would determine that and other matters of more or less significant detail.

It may be surprising to the casual reader of New Jersey's two constitutions to be told that 1844 did not represent a radical break with our constitutional past. On the surface, the two documents look about as different as might be, and there has been a tendency to think of the changes wrought in 1844 as almost revolutionary in scope. It is true that many of the decisions made or ratified in 1844 were important individually and collectively, in their ultimate effect on the quality of government and the direction and tempo of later constitutional evolution. For example, the preservation of equal representation of the counties in the senate coupled with a difficult method of amendment has certainly helped to keep the constitution from being amended

or revised as much as most state constitutions during the last 98 years. Again, the failure to give the governor certain powers has prevented the development in recent years of an integrated system of state administration. The decisions of the convention which are responsible for these conditions were conservative rather than "innovating" decisions, however. In retrospect, therefore, the *changes* made by the convention of 1844 appear less rather than more important than they did at the time. The effect of tradition on the convention itself is only one reason for this. Tradition operates continuously, and political habit, legal method, and social forces automatically set to work to conform the operation of any new constitution or law as closely as possible to the accustomed ways of the prevailing order—to things as they are and continue to be.

On the other hand, failure to change constitutional provisions which have become inconsistent with current ideas or conditions may seriously impede efficient, responsible government. The normal function of constitutional revision is to harmonize a written constitution with essential tendencies of the prevailing order, not to create a new order. This was certainly true of the convention of 1844. Matters had probably not yet reached such a pass that there was serious danger of an early failure of government to meet the increasing demands put upon it. But if the old constitution had not become so precarious a vehicle of political power as to endanger the peace and safety of the State, it was becoming more and more uncomfortable and inconvenient. If it had not been changed in 1844, it would certainly have been revised within the next generation, perhaps after a serious breakdown.

As we read on, especially in the debates themselves, let us bear in mind that the living *will* be ruled by the living. A written constitution framed by the dead can not perpetuate the rule of the dead; but it can perpetuate their influence, often in ways which they would not have wished. It may have an effect, limited but important, on which of the living will do the ruling, on how they will rule and for whose benefit. A timely constitutional convention may well save a political society from destruction or capture by forces able and willing to sneak into power through its loopholes or to leap into power over its ruins.

Such reflections come naturally in these latter days which have seen the subversion of so many constitutions. They also came naturally to Americans a hundred years ago. The following, written in 1816 by Thomas Jefferson in advocacy of a constitutional convention in Virginia, had long expressed the sentiments of many Jerseymen still in

1844 living under their first "crude" constitution, written in the less "enlightened" days of 1776:

> Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. . . . I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. . . . Let us, as our sister States have done, avail ourselves of our reason and experience, to correct the crude essays of our first and unexperienced, although wise, virtuous, and well meaning councils. And, lastly, let us provide in our constitution for its revision at stated periods. . . . If this avenue (of legal revision) be shut to the call of sufferance, it will make itself heard through that of force, and we shall go on, as other nations are doing, in the endless circle of oppression, rebellion, reformation; and oppression, rebellion, reformation, again; and so on forever.[1]

Of course, a constitutional convention is not always "successful." It may fail to read the signs of the times correctly or to reduce them to a writing which the people will accept. The success of a convention will depend largely on the expertness with which it is organized and managed. Such circumstances as the representativeness of the body of delegates, the amount of preparatory research, the length of time allowed for committee work and debate, and the opportunity given for public threshing out of issues will certainly influence close decisions on controversial matters and affect the artistry with which the finished document is put together. The self-restraint and political acumen displayed by the members in dealing with matters of partisan, sectional or economic conflict may determine whether or not the revision or amendments will be ratified, and how well pleased the people will be. The character of the statewide organization of public education and

discussion on the work and proposals of the convention will also affect the action of the voters and the extent to which the result will represent the general interest as distinguished from special or local interests. In view of the efficient organization of minority pressure groups, this is more important today than it was in 1844, when government had fewer functions. But no constitution was ever framed and adopted without compromise; and the men of 1844 were quite conscious of the problem of reconciling particular interests with the public interest.

The convention of 1844 is instructive on a number of these matters of technique or method in constitutional revision, as well as on the larger question of the principles of constitutional evolution and the function of conventions in that evolution.

2. COLONIAL CONSTITUTIONS

The constitutional history of New Jersey starts on the other side of the Atlantic Ocean in medieval England. From that time and place New Jersey inherited the two great branches of English law, known respectively as common law and equity, together with the basic principle of constitutionalism that government should be *under*, not *above*, the law. Along with the law came the court system which is still so nearly intact that New Jersey's twentieth century judicial system has been called "an eighteenth century provincial mill built upon an English model of the middle ages."[2] Many of the essentials of legislative organization and procedure were likewise carried to the colony from the mother country and have persisted to the present day. Much of our bill of rights, although shaped somewhat by American experience, stems back to constitutional struggles in the seventeenth and earlier centuries in England. Finally, the system of town or township government, imported directly from New England, still bears evidences of its descent from the Tudor parish; while such county officers as sheriffs, coroners and justices of the peace are even more obviously handed down from medieval England.

New Jersey was granted to the Duke of York in 1664 and almost immediately regranted by him to his friends, Lord Berkeley and Sir George Carteret. The first document that might be called a constitution for New Jersey was "The Concession and Agreement of the Lords Proprietors," brought by Governor Philip Carteret in 1665. It provided for a governor representing the proprietors, councilors appointed by him and elected deputies. The governor, with the consent of members of the council, was to create courts, appoint officers, see that

the laws were executed, organize militia, and do everything for "the safety, peace, and well government" of the Province, "not contrary to the Lawes." The legislature, consisting of the councilors and deputies, chose at its first meeting to sit as two chambers, thus establishing the bicameral system. Acts of the legislature were to "be consonant to reason and as neare as may be conveniently agreeable to the lawes and Customs of England." This constitution obviously did not derive its authority from the people; but, because the proprietors wished to attract settlers, the Concession contained liberal guarantees of private rights. Liberty of "opinion and practice in matters of religious concernments" was absolutely guaranteed, and no tax or assessment could be imposed, except by authority of the general assembly.

In 1676 New Jersey was divided into East and West Jersey. The first constitution of West Jersey, entitled "The Charter of Fundamental Laws of West Jersey Agreed Upon," attributed to William Penn, was never fully applied; but it set the stage for the remarkably liberal government of West Jersey and the theories of natural law and common consent underlying it, as well as some of its provisions, have significance for later constitutional history. There was a provision specifically forbidding the legislature to make any "laws that in the least contradict, differ, or vary from the said fundamentals, under what pretense or allegation soever," an unusually clear statement of the principle of the constitutionally limited legislature. Any member who attempted to violate this provision was to be subject to prosecution as a traitor. There was an extensive bill of rights, guaranteeing freedom of worship, trial by jury, no imprisonment for debt, etc. There were other provisions designed to insure honest elections, responsibility of members of the assembly to their constituents, and the equitable levying of taxes.[3]

The next important constitution derived from the Commission and Instructions brought by Lord Cornbury, the first royal governor of united New Jersey, in 1702.[4] These documents did not greatly change the fundamentals of the internal constitutional system, and continued with modifications to provide the basis for government in New Jersey until the Revolution. This constitution, like its predecessors, did not come from the people. Nevertheless, as time went on, the people of the colony developed a theory that various grants, concessions and precedents, together with the historic "rights of Englishmen," amounted to a guarantee of certain rights of liberty, property and self-government, from which no external power could rightly detract. Consequently, we find the New Jersey Assembly protesting against a bill proposed in

Parliament in 1744, which would have outlawed legal tender notes and given royal instructions the force of acts of Parliament, as not only an "encroachment upon the fundamental Constitution of this colony . . . but also destructive of the liberties and properties of his Majesty's subjects."[5]

The framework of government of the royal province of New Jersey may be described briefly. The governor, appointed by the King, enjoyed an impressive combination of executive, legislative and judicial powers. He had the right to appoint judges and other state and county officers, to command the militia, to levy taxes, to pardon offenders (except for treason and wilful murder), to adjourn the legislature, to put an unqualified veto on any of its acts and to act as chancellor and ordinary or surrogate-general. He appointed surrogates to act as his deputies in judicial matters concerning the settlement of estates.

The governor and council constituted the highest court of appeals, and the governor, with the consent of the council established the other courts of law. Consequently, Lord Cornbury's Ordinance For Establishing Courts of Judicature laid the basis for our present system of common law courts. Richard S. Field, a distinguished New Jersey jurist and legal historian, and member of the convention of 1844, writing in 1848, spoke of this ordinance as "having laid the foundation for our whole judicial system." He remarked that Lord Cornbury had found the materials for the ordinance "in the several courts which existed under the proprietary government, . . . but he reduced them to order, and gave them shape, and beauty, and proportion." Then the writer added, "All that has been done from that day to this, has been but to fill up, as it were, the outline which he sketched, to add some additional apartments to the judicial edifice which he constructed."[6]

The legislature, consisting of the governor, an appointed council and an elected assembly, was empowered to make laws, "as near as may be agreeable to the laws and statutes of England." The old division between East and West Jersey was recognized by an arrangement that the legislature was to meet alternately at Perth Amboy and Burlington and by a provision that the council was to consist of an equal number of members drawn from each half of the colony. Thus was established a precedent for representation of territory as distinct from population in the upper legislative house, which we find perpetuated in the equal representation of the counties under the constitutions of 1776 and 1844. It is only fair to add, however, that the two

halves of the colony did not differ greatly in population during most of the eighteenth century. The governor was, of course, dependent on the assembly for his salary and the expenses of government, and the assembly had the privilege of examining the accounts. There were fairly substantial property qualifications for voters and still more substantial ones for members of the assembly.

The bill of rights was not so extensive as those in the earlier documents, but religious liberty was guaranteed, except to papists, and there was the provision that no man's life or property could "be taken away or harmed . . . otherwise than by established and known laws," a guarantee corresponding to the modern provision that no person shall be deprived of life, liberty or property without due process of law.

One of the functions of colonial legislatures was to set up and provide for the government of counties, townships and other local units. The counties, then as now, were largely units for the administration of judicial and other activities prescribed by the state. The governor appointed not only county judges, but also sheriffs and other officers. The sheriffs were, as in medieval England, really representatives of the central executive authority in law enforcement, election administration and other matters. This doubtless accounts for occasional attempts by the assembly to curb them and helps to explain the limitations on the re-eligibility of the sheriff in the constitutions of 1776 and 1844.

On the whole, the pattern of government in colonial New Jersey was fairly typical of that found in most of the colonies. The governor was intended by the proprietary and royal architects of the system to be the center of gravity. This structure provided the setting for the familiar colonial struggle between the assembly, representing "the people," and the governor, representing the imperial interest. In the course of this struggle the assembly and its protagonists developed more and more clearly the notion of the existence, in old concessions and customs, of a constitution "establishing and fixing certain principles for the government." Naturally, these principles, as they saw them, were on the side of the legislature, especially the lower, or popular, branch of the legislature, just as the ancient constitutional principles discovered and proclaimed by the seventeenth century parliamentarians were found to be on the side of the House of Commons. The fact that the governors could also, like James I and Charles I, talk in constitutional terms, and that the legislature had a very practical and potent argument in the control of the purse, did not conduce to an amicable settlement of the political and constitutional conflict be-

tween them. This was especially so since the theoretical position of the governor was stronger than his practical position, while the practical effect of the assembly's control of the purse was frequently to transfer the actual center of constitutional gravity from the governor to the legislature. The inevitable consequence was the American Revolution, which was formally proclaimed in New Jersey on July 2, 1776, with the adoption by the Fourth Provincial Congress of a combined constitution and declaration of independence.

3. THE CONSTITUTION OF 1776

New Jersey was the third colony to adopt a constitution. The document was necessarily drawn in haste and practically without the benefit of earlier state constitutions to serve as models. It is assumed that this brief constitution was largely the work of one man; although there is dispute as to which member of the drafting committee of ten he was. In any event, the constitution became the law of the "colony" by vote of the provincial congress only eight days after the appointment of the committee. This haste may have been due partly to the arrival of the British fleet off Sandy Hook.[7]

The failure to submit the constitution to the people for their approval was consistent with the practice of the other states at the time, although it was later used as an argument for a new constitution. The severest critic of the constitution, William Griffith, admitted, however, that formal submission to the people would have been impracticable under the circumstances, and declared firmly: "That this constitution was adopted by the *authority* of the people, through their delegates, so as to be *obligatory* upon them, is not to be questioned."[8]

The congress itself attributed the authority of the constitution to the people, setting forth in the preamble that, "All the constitutional authority ever possessed by the kings of Great Britain over these Colonies . . . was, by compact, derived from the people, and held of them, for the common interest of the whole society."

After relating that the misdeeds of George III have dissolved the compact, the preamble concludes: "We, the representatives of the colony of New Jersey, . . . have, after mature deliberations, agreed upon a set of charter rights and the form of a Constitution."

Any informality which may be charged against the origin of this instrument was quickly neutralized by the popular "approbation" which greeted it. For example, the Burlington County Grand Jury in 1776 informed Judge Samuel Tucker that "The Constitution, as lately

formed by the Honorable Convention of this state gives us the utmost satisfaction, and as we believe, the county we represent."[9] Governor Livingston in his inaugural address spoke of the constitution as having "by tacit acquiescence and open approbation, . . . received the assent and concurrence of the good people of this State, to whose consideration it was for that purpose submitted."[10] The authorities all agree that such indication of "the consent of the governed" is more important than "any compliance with legal formalities" in determining the validity of a constitution.[11] As the Whig councilor, G. H. Brown, said, answering aspersions on the legitimacy of the constitution in the debate over the convention bill of 1844, "Its authority is not derived from the Congress which formed it, but from the action of the people under it, without question, every year since its formation, and they could adopt it in no more solemn manner."[12]

Article I of the Constitution of 1776 declares: "That the government of the Province shall be vested in a Governor, Legislative Council, and General Assembly."

It is clear from this and the following articles that the new government was to be as nearly as possible a replica of the familiar one of colony days. Only such changes were made as were required by independence, unquestioned popular sovereignty and the hostility to executive prerogatives engendered by conflicts with colonial governors.

The legislature was a copy of the colonial legislature. It consisted of two houses, all the members of which were elected annually. Substantial property qualifications for members and electors were continued. The lower house, or assembly, had at least 39 members apportioned among the counties roughly according to population. The upper house, still called the council, was, like the assembly, to be elected; but each county was given one member. Thus the present equal representation of the counties in the senate had its origin.

The suspicion of executive power and the fact that the struggle for colonial rights had been conducted mainly through the assembly naturally resulted in the exaltation of the legislative branch and the violation of the theory, which soon became prevalent, that an essential safeguard of free government was a fairly complete separation of powers among distinct executive, legislative, and judicial branches. In 1788 James Madison in No. 47 of *The Federalist* described the way in which the constitution of New Jersey "blended the different powers of government" as follows:

> The governor, who is the executive magistrate, is appointed by the legislature; is chancellor and ordinary, or surrogate of the State; is a member of one of the legislative branches. The same legislative branch acts again as executive council of the Governor, and with him constitutes the Court of Appeals. The members of the judiciary department are appointed by the legislative department, and removable by one branch of it on the impeachment of the other.

Madison could have added that the constitution also empowered the legislature to appoint the field and general officers of the militia, justices of the peace, clerks of the supreme court and of the county courts, the attorney general, the "Provincial Secretary," and the "Provincial Treasurer." Moreover, the legislature could and did assume from time to time the appointment of other officers: e.g., the keeper and inspectors of the state prison,[13] surrogates after 1822, and county prosecutors after 1823.[14] The upper house, or council, elected a vice president, who acted in place of the governor in his absence. The assembly could be called into extraordinary session only by the speaker. The governor or vice-president could convene the council and was required to do so whenever the assembly met. The governor and council acted as a court of pardons.

The one practical gesture in the direction of the separation of powers was the provision that in order that the legislature "may, as much as possible, be preserved from all suspicion of corruption, none of the judges of the supreme or other courts, sheriffs, or any other person or persons possessed of a post of profit under the government, other than justices of the peace, shall be entitled to sit in the assembly." Thus the lower house of the legislature was preserved as a purely legislative and appointing body, but legislative, executive, and judicial functions were allotted to the upper house or its members without restriction. The council enjoyed equal legislative power with the assembly, except that it might "not prepare or alter any money bill."

In spite of all this, the governor, who was elected annually by the legislature in joint meeting, was solemnly declared to "have the supreme executive power," was to "act as Captain General and Commander in Chief" of the militia and was to commission officers elected by the legislature or the people of the counties.

The only provisions concerning county and local government called for the annual election of sheriffs and coroners in each county and of constables and commissioners of tax appeals at the annual

town meeting in each township. Sheriffs and coroners, if elected for three successive years, were then ineligible for three years.

It is not necessary to point out in detail how directly and naturally these arrangements grew out of colonial experience. The all-important change was the subordination of the executive, yet the governor continued to be chancellor and ordinary and the president of council in its executive, legislative, and judicial capacities. Thus, the center of gravity was legally changed from governor to legislature, with as little change in form and the familiar landmarks as possible. The authors assumed that the system of courts established by Lord Cornbury would be continued, subject only to change in the appointment of judges.

4. CONSTITUTIONAL PRINCIPLES

New Jersey's constitutional honeymoon was soon over. Roughly, its end can be marked by the successful launching of the new federal constitution in 1789. From then until 1844 agitation for revision of the state's Revolutionary constitution was, if not chronic, at least periodic. Much of the argument for revision was based on the need for correcting certain "theoretic errors" in the old constitution, which, it was charged, were productive of "*actual* evils" in the form of "constant, growing and alarming injuries to the well being and happiness of society."[15]

Griffith was expressing the common belief when he wrote in 1798 that "since 1776 . . . knowledge, and particularly the kind which is exercised upon political subjects, has . . . advanced in a ratio not equalled perhaps in any former equal duration of time; that the just principles of republican government, tested by experience, have been gradually unfolding themselves, and received adoption from the states around us, under their new constitution. . . ."[16]

This "vast accession of political knowledge, which genius and patriotism have in these times shed over the world" had most fortunately culminated in "the formation of a *national* government, that to live under is the greatest happiness we can enjoy as a people, and which to imitate (to a certain extent) in our state constitution, would be productive of the highest benefits to us as citizens of New Jersey.[17]

What were the "just principles of republican government," in the light of which New Jersey's first constitution was so soon revealed as containing "no vestiges of dignity, wisdom or safety"? The answer comes back in terms of the "errors" in the constitution itself: "No

lines are drawn between the essential departments of government; no checks are provided against their encroachments upon each other; the executive is annihilated entirely in the legislative; the judiciary is rendered weak and dependent upon the same branch; and that again, in its turn, is corrupted and diverted from its proper functions, by the spoils which it has made from the other departments."[18]

In other words, *the great* principle of republican government, which had "been gradually unfolding" itself since 1776 was the separation of powers, the signal violation of which Madison had noted in the New Jersey constitution in 1788. Because of the influence from that day to this of Montesquieu's famous dictum that "there can be no liberty" if "the legislative and executive powers are united in the same person or body" or if "the power of judging" be joined "with the legislative" or "to the executive power," it will be worth while to stop for a brief review of the origin, growth, and meaning of this doctrine.[19]

The separation of powers has meant many things to many people in the last two centuries. It has acquired magic overtones which make it easy to forget the concrete situations and practical objectives for which its varied forms have been devised. The more precise its verbal formulation, the more baffling and elusive has been its application. It has frequently been least heeded just when it was being most ardently embraced. It has been praised as the sum of human wisdom on things governmental and damned as utterly destructive of all efficiency and responsibility in government. It is sometimes the ultimate verbal weapon by which each of two irreconcilable opponents demolishes the other in an argument. It has no fixed and certain meaning; but it is not meaningless. It certainly cannot be ignored, especially by anyone anxious to understand the still lively controversy over the proper frame of government for New Jersey.

The history of the theory can be traced remotely to Aristotle, and more immediately to the doctrine, which found varied expression in a growing literature after the middle of the seventeenth century, that the powers of government should be separated and "balanced" among distinct departments or representatives of different estates or classes. The theory was propounded primarily to explain, restore, or preserve the supposed excellence of the historic English constitution, which was compared with the "mixed" government of republican Rome, described by Polybius and Cicero as mingling monarchical, aristocratic and democratic elements in a salutary system of checks and balances. The English constitution of the seventeenth century, including the intended

constitution of Cromwell's *Instrument of Government*, came pretty close to fitting this description. The constitutional arrangements of 1688-9, culminating in the Act of Settlement of 1701 which gave life tenure to judges and forbade officeholders to sit in the house of commons, sought to make this system safe, both for a reasonable king and for the reasonable men of property who read John Locke and sometimes established plantations in America.

If Locke, writing in 1790, can be thought of as the father of the modern separation of powers theory, Montesquieu a half century later became its mother.[20] Locke classified the powers of government as legislative, executive, and federative. The executive power and federative power (having to do with war, peace, and external relations) though distinct, may for convenience be placed in the same hands; but the legislative and executive powers should be separated "because it may be too great temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them. . . ."[21]

Montesquieu gave this doctrine the symmetry which fascinated our own post-Revolutionary constitution makers, by translating Locke's executive and federative powers into the modern judicial and executive powers, respectively, and including in the latter the more active phases of the execution of public policy in both internal and external affairs. This transposition of executive and judicial powers has caused verbal and logical confusion ever since. One reason is that logically and practically Locke came somewhat closer than Montesquieu to what Professor Frank J. Goodnow, two hundred years later, was pointing out as the essential distinction between the *two* functions of *politics* and *administration*. This helps to explain the paradox of American "chief executives" without executive power serving primarily as "political" checks on legislatures, while most of the responsibility for "administration" has gone to the courts, local governments, and other agencies independent of the "executive."

By the time Montesquieu had readied the theory for importation to America, Walpole's long ministry had so far developed the cabinet system that the coming of responsible government in England had now to wait neither for a restoration of the balance of three estates nor for the actual separation of three powers but rather for the emancipation of the House of Commons from bribery and the owners of "rotten boroughs." In the future, effective legislative and executive power would be concentrated in "the ministry," whether it was the agent of a free and representative Parliament, or of a king able to buy

Parliament. The shocking methods of Walpole and his successors, together with the retrospective "literary theory" of the constitution, as expounded by Montesquieu and Blackstone, helped to keep Americans and many Englishmen from understanding the constructive aspect of this development. Consequently, as Professor Carpenter has said, "Across the black morass of English political corruption the principles of Montesquieu loomed to American statesmen all the more vividly."[22]

Before American statesmen could take full advantage of "the principles of Montesquieu," however, a breathing space and some personal experience with organizing independent governments were required. And the principles themselves needed to be acclimated to the strange new air of free America.

The crystallization of the doctrine between 1776 and 1787 may be observed through the work of John Adams, whose successive writings inspired both the makers of the New Jersey constitution of 1776 and the critics of that constitution a quarter of a century later.

Early in 1776, Adams, in response to inquiries from members of the North Carolina and New Jersey constitution-making bodies, outlined his views on the specifications for a state constitution. The New Jersey recipient of this sketch was a friend and correspondent of Adams, Jonathan Dickinson Sergeant, whom Dr. Erdman credits with the principal authorship of our state constitution.[23] After outlining the need for the annual election of a representative assembly which "should be an exact portrait, in miniature, of the people at large," Adams asked, "Shall we leave all the powers of government to this assembly? Shall they make, and execute, and interpret laws too? I answer, No; a people cannot be long free, and never can be happy, whose laws are made, executed, and interpreted by one assembly."

"*A single assembly,*" declared Adams, "*is liable to all the vices, follies, and frailties of an individual. . . .*" Furthermore, it lacks two qualities, "secrecy and dispatch," essential to the executive power; and, it is "too numerous, too slow, and generally too little skilled in the laws" to be "qualified to exercise the judicial power."

This all sounds clear enough; but the rub came then, as always, in translating it in terms of organization and a distribution of powers. Adams's 1776 prescription as to machinery was not so very different from what Sergeant and his associates wrote into the constitution which in only a few years was being roundly denounced by Griffith on the authority of Adams's own later writings.

Adams insisted upon two legislative houses to check each other. His upper house was to be chosen by the lower; and both "by joint ballot" (i.e., joint meeting) were annually to choose a governor, who was to be divested "*of most of those badges of slavery called prerogatives*" but would be "a third branch of the legislature," with a negative on its acts. Adams allowed that if the veto power were strongly objected to, the governor might be made "in a legislative capacity only president of the council." The "lieutenant-governor, secretary, treasurer, and attorney-general should be chosen by joint ballot of both houses," while "The governor, by and with, and not without, the advice and consent of council, should appoint all judges, justices, and all other officers, civil and military. . . ." "But," agreed Adams, "If you choose to have a government more popular, all officers may be chosen by one house of assembly, subject to the negative of the other." He made a great point of the dependence of "the stability of government . . . , the morals of the people, and every other blessing of society . . . upon an able and impartial administration of justice," and consequently advised life tenure for judges. For legislative and executive officers he admitted that enforced rotation might be desirable and suggested a three-year limit for re-eligibility, to be succeeded by three years of ineligibility.

Adams frankly described his plan "as a temporary expedient under the present pressure of affairs." Among the changes which he thought "time and experience may dictate" were "*giving the choice of the governor to the people at large, and of the counsellors to the freeholders of the counties.*" Two things he regarded as indispensable: "the education of youth, both in literature and morals," and "some regulation for securing forever an equitable choice of representatives." He was also convinced that elections "*ought to be annual; for there is not in all science a maxim more infallible than this, where annual elections end, there slavery begins.*"

The New Jersey constitution of 1776 departed from this prescription in only one material respect, namely, in its failure to provide life tenure and complete independence for the judiciary. Adams would have preferred a governor with veto power; but he did not yet think of independent election and integration of the executive as either necessary or particularly desirable. He was doubtless pleased by the oath binding legislators not to tamper with annual elections of members of the council and assembly. In fact, New Jersey took this part of Adams's advice so seriously that it is now the only state which annually elects one house of the legislature. As Mr. Vroom put it, in

the 1844 convention, the principle of annual election "has been the delight of the people from time immemorial," and "is engrafted on our whole system."

The development of Adams's thinking in the next three years was indicated in the fall of 1779 by the committee draft of the new constitution for Massachusetts, of which he was principal author. This document provided for the *annual* election *by the people* of a two-house legislature and a governor. The governor, checked by a council consisting of the elected lieutenant governor and nine senators chosen by joint meeting, was to appoint judges and most civil and military officers, except the secretary, treasurer, and receiver-general who were to be elected by joint meeting. "The first magistrate" was also given "a negative upon all the laws, that he may have power to preserve the independence of the executive and judicial departments." Judges were given tenure "during good behavior." The convention made two changes in this scheme which Adams regarded as material. The first gave the legislature the right to override a veto by a two-thirds vote; the second gave the members of the militia the right to elect all but their highest officers. Adams would also have made the governor ineligible for more than five years in any seven; but the convention, having reduced his power, deleted this restriction.[24]

The great apostle of checks and balances was obviously reducing his theories to more concrete terms. The principal development since 1776 had been an increasing emphasis on independence and vigor in the executive, although the requirement that the governor act with the consent of the council reflected a continuing fear of "those badges of slavery called prerogatives" so long associated with the chief of state.

A still greater emphasis on the executive is observable in Adams's *"Defense of the Constitutions of Government of the United States of America,"* which appeared early in 1787.[25] This book, which the members of the approaching federal convention "were all reading in the spring of 1787," was "the whole of it a learned defense of balance."[26] Griffith, the Federalist, put Adams first in his list of "the most approved political writers," and added anent the *Defense*: "No one who has his reason, is a citizen of the American Union, and has arrived to man's estate, ought to be without this book. It will prove the safeguard of his virtues, and an antidote to all the poisons of democracy, anarchy and atheism."[27] On the importance of a strong executive, Adams uses the following language, later quoted with approval by Griffith:

> If there is one certain truth to be collected from the history of all ages, it is this; that the people's rights and liberties, and the democratical mixture in a constitution can never be preserved without a strong executive, or, in other words without separating the executive from the legislative power. If the executive power, or any considerable part of it, is left in the hands either of an aristocratical or a democratic assembly, it will corrupt the legislature as necessarily as rust corrupts iron or as arsenic poisons the human body; and when the legislature is corrupted, the people are undone."[28]

Adams insists later that the executive should be one man, elected by the people, and remarks that although the executive power "is the natural friend of the people, and the only defense which they can have against the avarice and ambition of the rich and distinguished citizens, yet, such is their thoughtless simplicity, they are ever ready to believe that the evils they feel are brought upon them by the executive power."[29] These conflicting views of the relation between executive power and popular liberty have troubled every debate on the proper position of governor or president from that day to this. They were very much in evidence in our convention of 1844 in the clash between those who looked upon a strong governor as "the only true representative of the people" and those who looked upon almost any enhancement of the governor's position as "a retrograde movement, worthy to have emanated from His Majesty the King . . . a remnant of barbarous times."

Adams's scholarly *Defense* makes it clear why the theory of the separation of powers, which runs so trippingly in the classic statement of the Massachusetts constitution or in the somewhat denatured statement in Article III of our own constitution of 1844, is so elusive in application. The first reason is that the architects of the doctrine of balance have really been agreed on only two points: (1) that power must be divided if it is to be safe, and (2) that, as Adams put it, "three branches of power have an unalterable foundation in nature."

The first serious difficulty is to identify the *three* natural divisions of power. The ancients spoke of a "balanced" constitution as one which included elements of monarchy, aristocracy and democracy; and the English assimilated this classic balance to their own trinity of king, lords and commons. The problem for Adams and other strictly republican theorists was to marry or identify this balance of classes in a state with a balance among the functions of govern-

ment. In this they were greatly aided by Montesquieu's deft translation of Locke's legislative, executive and federative powers into the modern legislative, judicial and executive powers, respectively; and by the development of a tradition of independence in the king's judges, who from Lord Coke's time at least had denied the right of the king to sit in judgment in his own courts. Yet Adams himself sometimes spoke of the three kinds of "authority, legislative, executive, and judicial";[30] and sometimes of the division of the legislature into assembly, council, and governor after the colonial pattern and the English model of commons, lords and king. He attributed the continuation of this latter division in the state constitution partly to "attachment by habit"; but mainly to "conviction that it was founded in nature and reason."[31] Clearly, Adams was as much interested in the division of the legislative power into three parts as he was in an independent judiciary outside this division. This was partly because he subscribed to the current psychological theory that, although it "be a reflection on human nature" power is of an "encroaching spirit," and consequently, "ambition must be made to counteract ambition."[32] But it was also partly because of his feeling that it was important to find some safe way to use the talents of "The rich, the well-born, and the able," who, if there were no upper chamber to which they might be banished and no independent executive to curb their passion for power, would surely "acquire an influence among the people" that would "soon be too much for simple honesty and plain sense," in a single unchecked "house of representatives."[33]

But confusion between a balance of three estates and a separation of three functional departments is only one source of difficulty with the separation of powers theory. A second, and latterly more serious problem, arises when one attempts to define the kind of power properly assignable to each of the three departments. Madison in No. 37 of *The Federalist* confesses that "Experience has instructed us that no skill in the science of government has yet been able to discriminate and define, with sufficient certainty, its three great provinces—the legislative, executive, and judiciary. . . ." Certainly no modern student of the *quasi-judicial, quasi-legislative* commissions which have become characteristic appendages of the executive side of modern governments will accuse Madison of premature defeatism.

Much confusion of thought and many constitutional mistakes could have been avoided in New Jersey and elsewhere in the last 150 years if men had not been bemused by the illusion of symmetry in a rule of three powers, so easy to state and so hard to apply. This is not

altogether the fault of the "founding fathers," however, The men who attended the birth of the republic were practical men moving toward very practical objectives. To them, theory was handmaid to experience. Their generalizations should be read, therefore, in the light of their objectives and their developing experience. Approached from this point of view, their apparently contradictory statements and inconsistent applications of the separation of powers become fairly easy to understand.

As Adams suggested, the division of the legislative power among three branches was inherited from colony days. The popular assemblies had represented the colonial interest, while the governor and the council had represented the imperial interest, and the judges, although held in check by the law, were the king's judges. It was natural, therefore, that the first constitution makers should have played down the position of the governor, provided for election of the council, and transferred appointment of judges from the executive to the legislative branch. The first state constitutions did, however, divide the legislative power in two or three parts, create at least nominally distinct executive and judicial departments and rely on frequent elections to keep the legislature in line.

The development of what became the traditional American separation of powers as outlined in *The Federalist*, can be attributed largely to experience with these first constitutions between 1776 and 1787. In Virginia, as in New Jersey, the governor and the principal executive and judicial officers were appointed by the legislature. Jefferson, in his *Notes on the State of Virginia*, quoted in No. 48 of the *Federalist*, complained that "All the powers of government, legislative, executive, and judicial, result to the legislative body." This *"elective despotism,"* Jefferson blamed on the failure to implement the constitutional declaration, that "the legislative, executive, and judiciary departments shall be separate and distinct," because *"no barrier was provided between these several powers."* New Jersey's William Griffith later remarked that if Jefferson's characterization "of the Virginia constitution as a 'tyranny,' . . . is a just one" it "applies with infinitely *more* force to that of New Jersey."[34] It is not surprising, therefore, that a survey of state experience led Madison to conclude "that a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands."

What was the answer? Most emphatically, it was not to divide the powers of government among three watertight and disconnected departments. The departments of government, like bodies in the Newtonian universe, which caught the imagination and colored the thinking of the men of the eighteenth century, may have distinct orbits of their own; but, like the parts of the universe, they are essentially interdependent elements in a greater whole. Hence the cautious statement in the New Hampshire constitution that the three "powers ought to be kept as separate from, and independent of each other . . . as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of unity and amity." In fact, unless each department is given "a constitutional control over the others" the desired separation "can never in practice be duly maintained."[35] Therefore, a "legislative" department would not necessarily be confined to legislation nor an "executive" department to administration, even if it were possible "to discriminate . . . with certainty" between the two. Of course, "the whole power of one department" must not be "exercised by the same hands which possess the whole power of another department."[36] Moreover, "each department should have a will of its own," and "be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. . . . But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others." Since "In republican government, the legislative authority necessarily predominates," the legislature should be divided "into different branches," while "the weakness of the executive may require . . . that it should be fortified" by the veto power.[37]

By 1787, therefore, leading thinkers had concluded that in order to make the separation of powers effective the executive must be strengthened. New York and Massachusetts had pointed the way toward a fairly independent chief magistrate; but the presidency, created by the convention of 1787 was the first American executive department strong enough fully to hold its own in the jungle of inter-departmental warfare. But what was the object of strengthening the executive? *Primarily to check the other two branches of the legislature.* This, as we have seen, was the main concern of Adams, who thought of the two houses as representing respectively the people and the aristocracy. But Jefferson, who did not see eye to eye with either Adams or Hamilton on the need for special means for harnessing the interests and

talents of an aristocracy of birth and wealth, nevertheless believed greatly in checks and balances to enforce constitutional limitations on governmental power. Consequently, he saw the president's veto as "the shield provided by the constitution to protect against the invasions of the legislature. . . ."[38]

But what of the executive and judicial branches? They must not be allowed to grow too strong either. We must have no elected George III's in our midst; and Jefferson was soon warning against the "engulfing" propensity of judicial power. The continuing hatred of monarchy helped to keep most states from creating a strong integrated executive department; while the Jeffersonian jealousy of a judicial "oligarchy" led to popular election of judges for relatively short terms. Election of judges and of a multiplicity of administrative officers, which came to be the rule in most states after the full effects of Jacksonian democracy had been felt, satisfied the basic formal requirements of the separation of powers. If state governments so organized have often failed to give satisfactory service, it is due as much to faulty application as to any inherent weakness in the principle of separation of powers.

It is the executive branch of power which has always given the architects of a "balanced" governmental structure the greatest logical and practical difficulty. And it is in the relations between the executive and legislative branches that our American constitutions, federal and state, have given the least happy accounts of themselves. An examination of the reasons for the historic difficulty of defining the sphere of the executive branch in a government of separated powers sheds considerable light on one of the most perplexing problems of modern statecraft. Applied specifically to the make-up of the executive, the problem, as stated by Hamilton in No. 70 of *The Federalist*, is how to combine the "energy in the Executive," which "is a leading character in the definition of good government" with those "ingredients which constitute safety in the republican sense;" namely, "a due dependence on the people" and "a due responsibility." Madison had already stated the problem in more general terms in No. 37 of *The Federalist* as that of "combining the requisite stability and energy in government with the inviolable attention due to liberty and the republican form." It is clear that a valid answer must be found not only in the composition and powers of each department, but also in workable relations among the departments. For, as Jefferson once said, "The execution of the laws is more important than the making them," while it is at least equally true that the wise and timely making of

laws depends on information and experience in the possession of the executive.[39]

We have already seen that the separation of powers was never intended by its responsible proponents to exclude the executive from participation in legislation. In fact exercise of the conservative influence of the veto on legislation was one of the principal reasons for an *independent* "executive" branch. Locke had gone even farther and, defining "prerogative" as "the power of doing public good without a rule," claimed for the executives the right "to do several things of their own free choice where the law was silent, and sometimes too against the direct letter of the law."[40] For example, "prerogative being nothing but a power in the hands of the prince to provide for the public good in such cases which, depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct," Locke suggested the propriety of executive reapportionment of representation in a legislature which has become "in tract of time . . . very unequal and disproportionate. . . ."[41]

The abuses of George III made such a broadly discretionary prerogative quite unacceptable to the men of the Revolution. Consequently, as Chief Justice Hornblower said in the Convention of 1844, "Our Executive has no prerogatives," a doctrine which has been pretty consistently adhered to by the courts in this and other states. Instead of prerogatives, our governors have constitutional powers, rather strictly confined by statute and interpretation.

By the middle of the last century, governors had generally won the veto, although a number of states, like New Jersey, permitted it to be overridden by an ordinary majority. Curiously, by this time, two of the reasons for the veto advanced at the time of the adoption of the federal constitution no longer had much validity. Adams's belief that it was necessary to mediate between a popular lower house and an aristocratic upper chamber was belied by events. De Tocqueville observed in 1831 that "nearly everywhere" the two houses were "chosen in the same manner, and by the same citizens;" and correctly concluded that "The Americans, plainly, did not desire . . . to make one house . . . aristocratic and the other democratic."[42] At the same time Jefferson's argument for the veto as the guardian of the constitution against legislative usurpations had been greatly weakened by the establishment of judicial review, which Jefferson deplored.

We have pointed out that the prerogative as a constructive or innovating force was ruled out of state constitutions. Even the first constitutions did not, however, consign the executive to a merely

negative role in legislation. Under the first constitution of this state, the governor was to "be constant President of the Council, and have a casting vote." In addition, he assumed the privilege of delivering messages and advising the legislature on its duty. In view of the popularity of a number of our governors before 1844, six of whom served from six to fourteen years each, their legislative influence must have been considerable. Mr. Condit in the convention of 1844 thought that an independent governor equipped with a veto subject to reversal by as much as a *three-fifths* vote would have less influence with the legislature than the governor under the old constitution. Later history indicates that he was probably right.

So much for the legislative power of the executive department. Are there no *executive* powers naturally belonging to that department? The essential point with Locke was that the legislature should not itself apply or carry out its own laws. We have already alluded to the historic confusion between the "executive" and "judicial" labels. So it is not surprising to read Griffith's explanation that when Adams wrote of the necessity for "separating the executive power from the legislative" he sometimes used "the term executive as including the judiciary authority, as well as that which in the strict sense belongs to the first magistrate."[43] The first problem is, therefore, to distinguish between the "judiciary authority" and the executive authority "in the strict sense."

The relatively independent *judicial* execution of the laws had developed in England long before the more active and discretionary phase of the executive function had been fully tamed and bridled by the concept of "political" or constitutional government as distinct from "regal" government, or government by uncensored discretion, to borrow language from the fifteenth century.[44] In England, the latter phase of executive power was finally tamed, not by the separation of powers but by the blending of legislative and executive powers in the cabinet. The principle of the unity of the cabinet overcame the tendency of legislative responsibility for administration to mean divided and irresponsible control by individual members, blocs, and committees. More recently, the rise of the professional civil service, less flatteringly dubbed the "bureaucracy," has come nearer than ever since Stuart times to giving England a separate non-judicial branch exercising executive power.

Even if the founders of our early state governments had understood or foreseen these developments, it is far from certain that they would have cared to emulate them. They gradually became disillu-

sioned with the results of legislative appointment of many administrative and judicial officers, and considerable sentiment developed for concentrating in the chief executive responsibility for all that part of the execution of the laws which was not properly judicial. In the minds of many, this included the appointment of judges. This line of thinking was written completely into the federal constitution and influenced in lesser degree some of the state constitutions.

Hamilton in No. 72 of *The Federalist* clearly defined that part of "the administration of government" which "falls peculiarly within the province of the executive department" as including "The actual conduct of foreign negotiations, the preparatory plans of finance, the application and disbursement of the public money in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the direction of the operations of war. . . ." He concluded that "The persons, therefore, to whose immediate management these different matters are committed, ought to be considered as the assistants or deputies of the chief magistrate, and on this account they ought to derive their offices from his appointment, at least from his nomination, and ought to be subject to his superintendence." As a matter of fact, Hamilton's view of the chief executive's role as maker and administrator of the budget was not fulfilled in the case of the president until recently; while few state governors have come even close to enjoying any general power of "superintendence" over the persons charged by law with the "executive details" of their governments.

Madison had declared flatly in No. 47 of *The Federalist* that "appointment to offices, particularly executive offices, is in its nature an executive function," and pointed out violations of this principle in various state constitutions. Jefferson agreed that "Nomination to office is an executive function. To give it to the legislature, as we do [in Virginia], is a violation of the principle of the separation of powers. It swerves the members from correctness, by temptations to intrigue for office themselves, and to a corrupt barter of votes; and destroys responsibility by dividing it among a multitude. . . ."[45]

Griffith summarized his views on the whole subject of the spheres of the three departments in the following critique of the New Jersey system:

> Thus the *legislature*, whose province it is only to pass *laws*, and to *prescribe* the rules of conduct, are also invested with, and exercise the powers of *expounding* and *carrying* those laws into effect. One of the branches of the legislature is a *court of law*, and both branches are invested with the *execution* of the laws, in the *appointment* of the public officers. The *executive* branch, on the other hand, is despoiled of its natural and orderly portion of authority, . . . and in the place of it, the constitution has assigned to this department (the executive) the performance of many judicial and subordinate duties, that are foreign to its nature and use. . . . The *executive* powers and duties are necessarily those, which will be *adequate* to give effect to the legislative provisions.
>
> These are, of course, the *appointment* of such officers as may be necessary to expound the laws, which constitutes the *judicial* power under the executive; and such again as are merely *ministerial* to the judiciary, in putting its sentences into force, such as sheriffs, coroners, and constables. Another incident of the *executive* department must be the command, the direction, and the appointment of the *military* force of the state, which is merely intended to aid the judicial authority, where it is too weak to put the laws in force, and to preserve the laws and the constitution from destruction, against either internal or external force and attack: so there are many other powers purely *executive* in their nature. In short, every thing necessary to the preservation and protection of the *constitution* and *laws* of the country, fall under the head of *executive* authority, when we speak of that as contradistinguished from the *legislative*.[46]

As a broad outline, this is pretty clear, considering the checkered career of the separation of powers prior to 1799. It may be taken, with a few additions, to be a good synthesis of the theory at that time. Griffith accepted bicameralism, which was generally considered essential, but he thought little of the veto which was deemed vital by many.[47] He was insistent on an independent judiciary and believed in judicial review, which, in spite of Jefferson, came to be one of the most important factors in the future development of the separation of powers. It will be observed that Griffith really thought of the essential functions of the executive *strictly speaking* as first, to provide a more acceptable agency than the legislature for appointing judges, and second, "to aid the judicial authority, where it is too weak to put the laws in force." Judicial power was still the principal part of executive power, and the part of the "chief executive" was to serve as midwife and pliant nurse, errand boy and champion to the judges.

The success of American courts, no matter how appointed or organized, in the competition for power and prestige is an interesting and important phenomenon. It has several sources, including the esoteric "artificial reason" of the common law with which Chief Justice Coke stumped James I, and more especially the acceptance of judicial review as the prime guarantor of constitutional documents and private rights. A third reason has been the continuing fear or neglect of the executive, which has diverted many non-judicial ministerial duties to the courts.

The separation of powers and concomitant checks and balances were certainly uppermost in the minds of most men who talked proudly of progress in the understanding of "the just principles of republican government" in the years following the Declaration of Independence. It must not be supposed, however, that these were the only principles considered essential. The separation of powers and checks and balances were means, not ends; and were really ancillary to two more fundamental principles of governmental organization and power: republicanism, or "dependence on the people," and constitutional limitations. Even these principles were really espoused not as ends in themselves, but as most conducive to "the peace, safety, and public good of the people," or more concretely, to "the enjoyment of their properties in peace and safety," which is "The great end of men's entering into society" and submitting to government.[48]

Republicanism and Limited Government

The principle of limited government was essentially the medieval English doctrine that the king was under the law, reinforced by the Lockeian doctrine that even the "supreme" legislative power in the state is limited by a higher or natural law not of any man's contrivance. By virtue of this higher law, individuals, minorities and society as a whole had rights and interests which no government can legitimately impair. Constitutions were written not to create but to confirm and define such rights and liberties. Separation of powers was a mechanical device for enforcing this concept.

Republicanism did not imply democracy, although Madison defined a republic as "a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour."[49] Most of the first American republicans doubtless held with Madison that "the freeholders of the country would be the safest depositories of republican liberty" or at least that ownership of some property was necessary to assure responsibility in an elector.[50] Many, like John Dickinson, believed such restriction of the suffrage to be "a necessary defense against the dangerous influence of those multitudes without property and without principle. . . ."[51] And a few agreed with Adams on the necessity of recognizing, in a separate branch of government, the inevitable aristocracy of wealth, ability and birth. These views were all "republican"; but Adams's ideas brought such bitter criticism on his head that Griffith undertook to defend him against "men so extremely depraved" as to cast doubt on the republicanism of "this virtuous and ever intrepid defender of the American revolution and governments. . . ."[52] Whatever the brand of a man's republicanism, he was almost sure to believe that the separation of powers would help to preserve it, whether by guarding "the society against the oppression of its rulers," or by guarding "one part of the society against the injustice of the other part."[53] Adams was most afraid of the destructive effect of a conflict of classes operating through factions or parties. Parties, he admitted, there must be; "the great secret is to control them. There are but two ways, either by a monarchy and standing army, or by a balance in the constitution. Where the people have a voice, and there is no balance, there will be everlasting fluctuations, revolutions, and horrors. . . ."[54]

The first requisite of a republican government was a representative assembly—that one legislative house "should be an exact portrait, in miniature, of the people at large."[55] Add to this the practice of frequent, preferably annual elections, and Adams assures us that we have "the only possible means of forming a free constitution, or of preserving the government of laws from the domination of men. . . ."[56]

A Lesson from England

It will help to explain the emphasis on the legislature and on yearly elections in our constitution of 1776 if we recall that many Britons were simultaneously seeking greater security for their constitutional rights and liberties through more representative annual parliaments purged of "placemen and pensioners." A scheme to promote such reforms through a "Grand National Association for Restoring the Constitution," with branches throughout the United Kingdom and the American colonies had just been propounded in a book which members of the Fourth Provincial Congress may have read.[57] Whether or not the book itself influenced writers of the constitution of 1776, it expressed ideas current in both England and America and supported

them with extensive quotations from such writers as Locke, Hume, Montesquieu, Milton, Sidney, Harrington and Bolingbroke.

The author felt no doubt of the power of the people to control a parliament once freed of the incubus of corruption, which "ruins the whole proceedings of a state, both in peace and war."[58] He stood firmly on the doctrine of popular sovereignty exercised through the rule of the majority (at least of the "people of property"), asserting that "whatever the majority desire, it is certainly lawful for them to have, unless they desire what is contrary to the laws of God." The right and the power of the majority were the ultimate guardians of the constitution, even against parliament. The following was quoted with approval from Bolingbroke, who had appropriated freely from Locke:

> Britain, according to our present constitution, cannot be undone by parliaments; for there is something which a parliament cannot do. A parliament cannot annul the constitution. . . . The legislative is a supreme, and may be called in one sense an absolute, but in, none, an arbitrary power. It is limited to the public good of the society. It is a power that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects, for the obligations of the law of nature cease not in society. . . .

If parliament were to attempt to subvert the constitution, "the whole nation" would have the right to resist, "and a people who deserve to enjoy liberty will find the means." Consequently, "nothing can destroy the constitution of Britain but the people of Britain. . . ."[59]

The New Jersey constitution of 1776 is clearly the legitimate offspring of this line of political thought, fertilized by colonial experience. The proposed English reform did not call for the abolition of the king, and there was no hostility to balanced government; but the emphasis was on rehabilitating the House of Commons and "restoring" it to its proper place in the constitution. The supporting arguments and quotations were selected to show the aptness of the right kind of representative assembly for preserving constitutional liberties. It was natural for English colonists in America similarly to stress the function of the legislature in a reformed, i.e. independent government. It was quite out of the question to fabricate almost overnight an

acceptable substitute for the monarchical element in the colonial constitutions. This was especially so in New Jersey, because our declaration of independence was only tentative, and the constitution ended with a proviso, displeasing to Adams, "that if a reconciliation between Great Britain and these Colonies should take place, and the latter be taken again under the protection and government of the Crown of Great Britain, this Charter shall be null and void. . . ." It is no wonder that for the time being our first constitution makers seized eagerly on popular sovereignty enforced by annual elections. It would take a few years for the people to learn to protect themselves against themselves and their own governments.

5. TOWARD A NEW CONSTITUTION

William Griffith declared that his object was "to bring home to every man's heart, a conviction of the *actual* evils which arise out of the theoretic errors of the constitution."[60]

The trouble with the movement for constitutional revision was that its supporters had great difficulty in persuading enough people that the admitted "theoretic errors" were productive of enough "actual evils" to justify the hazard of a change. The publication of *Eumenes* was timed to influence the legislature into calling a convention. A compromise bill was passed for a popular referendum on the question of whether or not to call a convention; but, partly because the matter became confused with the issues of the national election of 1800, the Republicans opposed it and the people voted "No Revision." Republican leaders argued that changes in the familiar constitution, defective as it was, might hinder rather than help the people's bid to take the reins of power from the Federalist "aristocrats." "It was stated that the friends of revision were judges, lawyers and men who had notoriously and repeatedly declared their disapprobation and abhorrence of all popular influence."[61] Having failed to obtain a convention, the revisionists next tried in 1819 to establish the right of the legislature to submit an amendment to the people, there being no method of amendment prescribed in the constitution. Although there was general approval of the subject matter of the proposed amendment (to change the date of the annual session of the legislature), the people defeated it 12,635 to 1,636! The *Newark Centinel of Freedom* correctly explained that the vote was

> decisive against amending the Constitution of this State by piecemeal. We do not infer . . . that the people are insensible

> to the defects of the present Constitution. . . . On the contrary, there is a strong disposition . . . to have the instrument amended in sundry important particulars; not by a little patchwork this year, and a little the next, but by a general revision of the whole, by a Convention chosen by the people, or some other way which may be prescribed by the legislature.[62]

In other words, the people did not want to run the risk of annual tinkering by an amending method not constitutionally safeguarded.

This sent the revisionists back to the quest for a convention. An unofficial "convention" of prominent men from nine counties met in Trenton in 1827 and produced a memorial reciting the defects in the constitution and asking the legislature to call a convention. The memorial never came out of the legislative committee to which it was referred.[63]

The truth seems to be that despite the words of editors, theorists and elder statesmen there never was an overwhelming demand on the part of the people for revision of the old constitution. This is not to be wondered at. Except in the most extraordinary times, the attitude of the average citizen toward a constitution is a curious compound of indifference and awe. Unless a constitution is naturally easy to amend, this attitude provides effective armor against any onslaughts from the minority who are studiously interested in the theories or professionally acquainted with the workings of constitutional government. It must not be forgotten, moreover, that there are always persons who stand to lose vested interests if a constitution is changed. These people invariably rally the twin defenders of *status quo*, fear of the unknown future and nostalgia for the almost equally unknown past, and arm them with an impressive array of legal technicalities and hypothetical objections.

Consequently it took the revisionists another 17 years to get the convention of 1844, and their final victory was apparently due more to political ineptitude on the part of the opposition than to a popular clamor that would not be denied. A committee of the 1840 council, in response to a recommendation from Governor Pennington, reviewed the defects of the constitution and suggested three possible methods for correcting them. One of their methods was embodied in an act passed by the council but pigeonholed in the assembly. This act would have authorized a commission of 12 members, 6 appointed by the council and 6 by the assembly, to prepare and submit a revised constitution to the people at the next election. The assembly also sidetracked a convention bill and defeated a compromise bill calling for a referendum vote on whether or not a convention should be called. The defeat of this compromise measure by the legislature of 1842-3 was a "great tactical blunder" on the part of the Whigs who controlled that body, Erdman points out, for it led the following year to the passage of the constitutional convention bill of 1844 by their Democratic opponents.[64] The voters might very probably have voted "no," if given the chance; but instead they were goaded into electing a Democratic legislature committed to calling a convention. The Whigs, now in the minority, tried unsuccessfully to stall action in 1844 by demanding the referendum which they had spurned a year earlier. It cannot be doubted, however, that 20 Whig legislators expressed the view which had balked the revisionists for two generations when they declared:

> It is now nearly sixty-eight years since our revolutionary fathers . . . formed our present Constitution and although it is fairly admitted that there are theoretical defects in that instrument, there has been, perhaps, no community of people in the world, that have enjoyed, during that time, a greater amount of the blessings which flow from good government than the people of New Jersey. Upon several occasions propositions have been made to alter or amend this fundamental law of our State; but hitherto, the people at large, being satisfied with its practical operation, seem to have preferred the enjoyment of the good in possession, rather than to incur the risk of experiments.[65]

It is interesting to note that the Republicans defeated the Federalist convention project in 1800; while it was the Democrats who fought for a convention against the Whigs in the 'forties.

AMBIGUOUS STATUS OF THE CONSTITUTION OF 1776

One of the most troublesome things about the Constitution of 1776, at least to persons with strict constitutional consciences, was the ambiguity of its status as fundamental law. As we have observed, no method of amendment was prescribed. Members of the legislature were required to take an oath to refrain from any vote "injurious to the public welfare" or annulling the specific provisions guaranteeing religious liberty, trial by jury or annual election of legislators; but they did not swear to uphold the constitution generally.

It is reasonable to conclude that the framers of the constitution, with the example of the omnipotent British Parliament in mind, expected that the legislature would make necessary changes in any but the excepted clauses. But by the end of the century, Griffith was explaining that the orthodox attitude toward the constitution had changed since 1776:

> At that day, when the nature of a constitution was less understood than at present, it was conceived that the *legislature* might, when formed, alter or amend any part of it. . . . Many sensible men, even at this day, maintain, that as no *revisionary* power is expressly provided, and certain parts only of the constitution *excepted* from legislative alteration, that the rest is subject to alteration and amendment by the ordinary acts of the legislature. If this be true, we have in reality no constitution. . . .[66]

Despite the views of "many sensible men," Griffith correctly implied that the general view in his day was in favor of the supremacy of the constitution as a document.

How was the supremacy of the written constitution to be maintained? Partly through public opinion and the self-restraint of annually elected legislatures; but in crucial matters, by the new found weapon of judicial review. New Jersey is credited with the first case in which an act of a state legislature was declared unconstitutional. To be sure, the State Supreme Court was able to rely in this case, decided in 1780, on the unalterable guarantee of trial by jury to invalidate an act authorizing the use of a jury of only six men.[67] The general supremacy of the constitution was firmly asserted, however, in the case of State *v.* Parkhurst in 1804. It is not necessary to outline the rather technical course of this case. Suffice it to report, in the words of a contemporary newspaper: "All the judges agreed in the right of the judiciary department to examine the constitutionality of a legislative act." The account continued with a word of editorial approval not generally concurred in by the Republican press: "We rejoice in this instance of the independence of our judges, honorable to themselves and useful to the State."[68] The opinion of Chief Justice Kirkpatrick, which was later endorsed by the Court of Appeals, is worth quoting. Taking note of doubts cast on the legitimacy of the constitution, the Chief Justice declared that the document of 1776 must be treated "as a constitution, if not framed, yet established by common

consent." He asked, "Can the legislature change or alter it?" He answered:

> What is a constitution? According to the common acceptation of the word in these United States, it may be said to be an agreement of the people, in their individual capacities, reduced to writing, establishing and fixing certain principles for the government of themselves.
>
> Among these principles, one of the most important in all our constitutions, is to prescribe and limit the objects of legislative power. The people are sovereign, they are supreme in power. The legislature act by delegated and circumscribed authority. . . . Now to say that the legislature can alter or change such a constitution, that they can do away that very principle which at the same time gives and limits their power, is in my view a perfect absurdity. It is establishing despotism without limitation and without control.[69]

This left only two ways for correcting the "errors" of the constitution. One was revision or amendment with popular approval. The other was "interpretation." Since the former was not obtained until 1844, any adjustment of the constitution to new conditions or changing ideas in the meantime was necessarily brought about through "interpretation."

ARGUMENTS OVER THE SUFFRAGE

"Interpretation" by the legislature accomplished what amounted to a rewriting of the suffrage provision. The constitution declared "that all inhabitants of this colony, of full age, who are worth fifty pounds, proclamation money, . . . and have resided within the county . . . for twelve months immediately preceding the election, shall be entitled to vote. . . ." This suffrage provision caused a number of difficulties.

The failure to specify *white male citizens* led to voting by aliens, women and Negroes between 1790 and 1807. In the latter year, however, the legislature restricted the suffrage by law to "free, white male citizens of the state," declaring that the act was "highly necessary to the safety, quiet, good order and dignity of the state." It appears that the safety, good order and dignity of the state had been most grievously threatened by illegal balloting by women in a number of elections.[70] Griffith doubtless spoke for the time when he said, "to my

mind . . . it is evident, that women, generally, are neither, by nature, nor habit, nor education, nor by their necessary condition in society, fitted to perform this duty with credit to themselves, or advantage to the public."[71]

The rise of democratic sentiment led to objections to the property qualifications. Vigorous attacks on the qualifications for voters and the £500 and £1,000 qualifications for assemblymen and councilors were launched as early as 1793 and resulted in petitions to the legislature urging amendment of the constitution in the interest "of an essential equality between the governing and governed."[72] In 1799 the Gloucester County grand jury urged favorable action on the proposal for a convention partly because they concurred with presiding Justice Blackwood in a "decided disapprobation" of the £50 qualification. "If a man be a citizen and resident in the state, pay taxes, be subject to its laws, and liable to be called upon to defend the country he lives in, he ought to have a voice in the appointment of his rulers."[73] Griffith agreed that the right to vote should depend "upon the *electors* paying *tax*, and not upon his swearing to his property, more or less," and that aliens should be excluded from the suffrage.[74]

Consequently, the suffrage act of 1807 also "explained" the property qualification by declaring that any person whose name appeared on the tax lists should be deemed to be worth £50. In 1844 even this test was eliminated, and an act declared that every free white male citizen" should "be deemed and taken to be worth fifty pounds proclamation money."[75] Although these acts were denounced in the legislature and in the press as unconstitutional, their proponents declared that they did not change, but merely interpreted or "declared the true meaning" of the constitution, and they were never attacked in the courts until 1911, when it was much too late to matter. This palpable dodge would certainly not have been resorted to if the constitution had provided a method for its amendment. Besides, the legislature might narrow the suffrage again by re-interpreting the constitution. Naturally, therefore, the undemocratic property qualifications both for voters and for legislators furnished a perennial argument for a convention. For example, the remarks of Councilor Wright in debate on the 1844 convention bill: ". . . As to elective franchise—a subject now of great diversity of opinion—fixed in one way by the constitution, but frequently changed by the laws—how necessary it is to get rid of all that uncertainty as soon as a convention can decide it, and determine, with the authority of the people, this political right of man."[76]

By 1844 the only real argument against the suffrage article was the democratic one; but it had not always been so. In 1809, a Federalist, parroting Adams, complained that the "Constitution gives a complete ascendancy to the democracy over the natural aristocracy of the country." Not only did it make no proper distinction between the two houses; but despite the constitutional £50 property qualification, "by common usage nearly all but paupers are considered worth this sum, though thousands of the voters are not worth fifty pence, clear estate. Females, citizens of other States, and even ALIENS, have been notoriously and frequently brought to the polls. . . ."[77]

BILL OF RIGHTS

Another perennial argument for a convention was based on the lack of a comprehensive bill of rights. For example, a writer in 1816 declared that the constitution "does not contain a sufficient declaration of rights and provisions for securing them," and asked: "What is there to prevent the majority from suspending the habeas corpus act, and practising a system of tyranny against the minority?"[78]

The only important clauses in the nature of a bill of rights were those assuring to criminals the same privileges of witnesses and counsel as their prosecutors, guaranteeing trial by jury and freedom of religious worship and providing that no *Protestant* inhabitant should be denied any civil right on account of religion. By implication, at least, non-Protestants were barred from elective office. Councilor Wright, in support of the convention bill of 1844, asked: "What more obnoxious provision could there be than that which establishes a restriction on religious liberty by providing that no man entertaining certain opinions shall hold an office?" Later in his speech, referring obviously to the general inadequacy of the constitutional safeguards of liberty, as compared with those of other states, Mr. Wright exclaimed: "The spirit of liberty is all pervading! The people are determined to secure universal freedom. . . . We should secure their natural, social and political rights. . . ."

"But," answered Whig Councilor G. H. Brown of Somerset,

> it [the constitution] makes perpetual three great rights of freemen—the trial by jury, the right to worship God according to the dictates of conscience, and the annual election of the legislature, and declares them to be a part of the charter without repeal. Thus two important rights are secured by it expressly, and all others effectually guarded by the third provision requiring the annual election of the legislature.[79]

Dr. Erdman calls attention to the omission of any provision similar to the general guarantee that life and property shall not be taken except in accordance with the law of the land, which was included in the Instructions to Lord Cornbury and earlier colonial documents. As Dr. Erdman suggests, however, the omission did not indicate indifference to the matter.[80] Mr. Browning, in the convention of 1844, declared without contradiction that "It is a fundamental principle of our Government, as old as *Magna Charta*, that no one shall be deprived of his life, liberty, or property—but *according to the law of the land*. . . . Genuine civil liberty consists in the faithful administration of Justice, according to fixed and settled rules of law." The framers of the constitution of 1776 doubtless thought that such fundamental rights were adequately cared for by Article XXII, which begins by providing "That the common law of England heretofore practiced in this colony, shall still remain in force," until altered by a future law of the legislature, and ends with the solemn injunction "that the inestimable right of trial by jury shall remain confirmed, as a part of the law of this colony, without repeal, forever." After all, what the men of the Revolution thought they were fighting for was the opportunity to exercise and protect their own rights as Englishmen through governments of their own choosing.

If the emphasis upon the right of trial by jury sounds a bit strange, it must be remembered that the jury, introduced by the Norman and Angevin kings for the more rigorous administration of justice, had long since become the cherished instrument by which the community protected itself against arbitrary acts of judges subservient to an irresponsible executive. Jefferson explained that

> We think in America that it is necessary to introduce the people into every department of government. . . . In the form of juries therefore they determine all matters of fact, leaving to the permanent judges to decide the law resulting from those facts. . . . It is left . . . to the juries, if they think the permanent judges are under any biass whatever in any cause, to take on themselves to judge the laws as well as the fact, . . . and by the exercise of this power they have been the firmest bulwarks of English liberty.[81]

De Tocqueville, recognized that "The jury is preeminently a political institution; it must be regarded as one form of the sovereignty of the people. . . . The jury is that portion of the nation to which the execution of the laws is intrusted, as the houses of parliament constitute that part of the nation which makes the laws. . . ."[82] It is not surprising, therefore, to read in the *New Jersey Gazette* in 1780: "Our constitution guards the life, liberty and property of the subject by the *trial* of a *jury* of his *peers*." Paradoxically, a writer in the same paper a year later maintained that thanks to "this inestimable privilege, the glory of freemen," persons legally possessed of slaves could not "constitutionally be divested of them by legislative authority."[83]

The value of the jury as a guard for liberty is illustrated by the history of the struggle for freedom of expression. Alexander Hamilton, arguing in 1804 for a new trial for one Croswell, charged in New York with a libel on President Jefferson, contended for the right of the jury in such cases to determine both the fact of publication and the legal question of whether or not it was libelous. Hamilton drew an analogy to the function of the jury in criminal cases, where, to quote a paraphrase of his remarks, he showed that "the law and fact being always blended upon the general issue of not guilty; the jury, for reasons of a peculiar and political nature, for the security of life and liberty, are entrusted with the power of deciding both law and fact. . . ."[84] Hamilton's argument was one of the sources of the language of a New York statute of 1805, which confirmed his view of the law. The substance of this act was written into the New York constitution of 1821 and was appropriated thence almost verbatim by the writers of the New Jersey constitution of 1844. Significantly, the only important objection raised in the convention against accepting the wording of the New York provision was the fear that the words, "the jury shall have the right to determine the law and the fact," might injure a defendant, by preventing the judge from ruling on evidence, or ordering a new trial if he felt the jury had been moved by passion or prejudice.

JUDICIAL REVIEW

The rudimentary bill of rights written into the constitution of 1776 was not the only constitutional protection afforded to vested property rights prior to 1844. The courts gradually developed doctrines, derived from the common law and "principles of natural justice and equity," through which, especially after 1830, they protected such rights.[85] Thus, by means of judicial review, a device unknown when the constitution of 1776 was adopted, the courts supplemented the written limitations on the power of a legislature originally supposed to have inherited most of the "transcendent powers of Parliament."[86]

The stimulus for this development was the increasing use of eminent domain to take property for the construction of canals, railroads and other "internal improvements." In the early years of the century the legislature usually provided for valuations by a jury; but this was held to be unnecessary by Chancellor Vroom in an 1832 opinion. Describing eminent domain as "a right appertaining to sovereignty . . . originally founded on state necessity," the chancellor declared that the constitutional provision for jury trial was "fully satisfied by preserving the trial by jury in all criminal cases, and all trials of right in suits at common law."[87] But Chancellor Vroom did not leave the matter entirely to the legislature. "The legislature, in this state," declared the chancellor, "is not omnipotent, as was the British parliament. It is subordinate to the constitution; and if it transcend its power, its acts are void, and it is the duty of the judiciary to declare them so. The duty is at all times unpleasant, but no independent tribunal will hesitate to do it in clear cases." With this and other tributes to the constitution as "the supreme law of the land," he proceeded, without the benefit of a syllable on the subject in the constitution of 1776, to define the scope of the "unpleasant" duty of the courts to enforce limits on the constitutional power of the legislature in eminent domain as follows: (a) "It is admitted, that private property shall not be taken for private use. The legislature has no right to take the property of one man and give it to another, even upon compensation being made;" and (b) the judgment of the legislature concerning the right to take property in a particular instance "is certainly entitled to a most respectful consideration," but the power of judgment is not "committed to the legislative department alone" and "the court may safely sit in judgment on this matter. . . ."

This opinion had behind it the statements of other judges, state and federal; but it is credited with being the first eminent domain case which plainly asserted "that the lawfulness of the use was a matter for judicial inquiry."[88]

The chancellor did find that in this case, the legislature was within its rights in putting eminent domain at the disposal of a company for the purpose of developing water power at the City of Trenton. Recalling the public benefits resulting from the private development of water power at Paterson, "the manufacturing emporium of the state, with a population of eight thousand souls," the chancellor continued concerning the act in question:

> They have authorized a company to do what the state itself might have done without having their right questioned. They have in this pursued the ordinary mode. All great improvements in our state, are made through private incorporated companies, and perhaps better accomplished in that way than any other. The mere mode of making them, forms no objection in itself to their constitutionality; courts will look at the object, and judge from that.

Surely, a Charles E. Hughes might well have said then, as he did three quarters of a century later, "We live under a constitution, but the constitution is what the judges say it is."

From the time of this case, there are fairly frequent judicial pronouncements to the effect that "upon principles of natural justice and equity, upon which are based all systems of civil government, and without which no government can or ought to endure," a vested property "right can not be taken and appropriated, impaired or destroyed, without compensation," to quote an 1841 opinion of the supreme court.[89] Curiously, in no case was an act of the legislature actually declared invalid; but there seems to be ample evidence "that the doctrine of vested rights exerted a very definite limitation on legislative power."[90]

Not only did the doctrine undoubtedly affect the content of legislation, but it affected the interpretation of statutes and corporate charters and the exercise of administrative action. The right to protect private rights against administrative proceedings based "upon illegal principles" was derived from the common law and the inherited jurisdiction of the courts. This jurisdiction was usually exercised by the chancellor through the injunction or by the Supreme Court through one of the three prerogative writs, *certiorari*, *mandamus* and *quo warranto*. The right to issue the prerogative writs was part of the jurisdiction of the Court of King's Bench, which under the present constitution of the state belongs exclusively and irrevocably to the supreme court.[91] To what extent the issuance of these writs was subject to regulation by the legislature prior to 1844 is not quite clear.[92] Whatever regulation there was did not appreciably interfere with the efforts of the courts in behalf of private rights, and it may be assumed that the courts would not have brooked effective interference. The fact is that the courts had, before 1844, laid down the principles which have served ever since as the basis for a thorough judicial policing of the legality of actions of the increasing number of local units and central agencies of a modern state. For example, the supreme court in 1839 set aside damages awarded by a special board of commis-

sioners to a property owner whose land had been traversed by the New Jersey Railroad. The court pointed out that its function was "to set aside the proceeding of such Commissioners, if they have adopted and acted upon illegal principles in making their valuation, . . . to ascertain which fact, affidavits may be taken and read before this Court, . . . although the merits of the case may not be inquired into."[93] This is essentially the rule today in cases where administrative action is allegedly in violation of the "due process of law" clause of the fourteenth amendment to the U. S. Constitution and the analogous clauses of the New Jersey constitution of 1844. Incidentally, in the 1839 case, as in many more recent cases, the inquiry into the facts by which the validity of the legal principle of action was determined came very close to being an inquiry into the merits of the decision itself.

One more point needs to be made in order to show the fundamental character of the protection afforded to private rights through the use of the prerogative writs. Although it is said that these writs are issuable at the discretion of the court, the court feels bound to issue them when certain facts appear. Of course, the only sanction for this obligation is the court's own conscience; but that, after all, is the only sanction, except impeachment or public opinion, behind any judicial duty. Chief Justice Kinsey in 1795 described the nature of the discretion of judges with respect to the writ of *certiorari* in the following well-chosen words: "I do not mean by this a power to do what they please, not directed by law and precedents, but . . . to be confined by those limits within which an honest man, competent to the discharge of the duties of his office, ought to be confined. . . ."[94]

The bill of rights, written into Article I of the constitution of 1844, includes certain provisions for the protection of property rights. Paragraph 1 declares that, "All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." This is a general protection, treated as equivalent to the *due process* clause of the fourteenth amendment. Yet in spite of this and specific provisions relating to eminent domain the courts have continued on occasion to appeal to "natural justice" rather than to the written constitution as the ultimate basis for the judicial enforcement of property rights. A fairly recent example is the opinion of Supreme Court Justice Katzenbach in the case outlawing a Nutley zoning ordinance, which led to the adoption of the 1927 amendment

to the constitution declaring zoning to be within the police power of the State. Said Justice Katzenbach: "The right to acquire property, to own it, to deal with it, and to use it as the owner chooses, so long as the use harms nobody, is a natural right. This does not owe its origin to constitutions. It existed before them."[95] We are thus brought straight back to John Locke and to what Professor Corwin has called "The Basic Doctrine of American Constitutional Law."[96] This doctrine of the sacredness of vested rights "owes its origin" to no words in a written constitution. It is rooted in the history of our political and economic system; its persistence is based on popular approval or acquiescence; and its precise meaning is determined largely by "what the judges say."

The history of constitutional guarantees illustrates the point that constitution-making is really a continuous process, in which a constitutional convention plays only an incidental, albeit a significant role. Most of the bill of rights added to our constitution by the convention of 1844 was not new to the constitution at all. The convention did little more than to write down the practice and experience of the preceding years in more or less explicit terms. And it did nothing at all about judicial review as the legal sanction for constitutional guarantees except to assume that it was a part of the "powers and jurisdiction" retained by the "several Courts of law and equity . . . as if this Constitution had not been adopted."[97] Mr. Field apparently spoke for the convention when he described the power of "four or five men" of the judiciary "to pronounce any act of the legislature which they may deem unconstitutional, absolutely void—to treat it as a dead letter—to trample it in the dust . . . ," and added: "We all, I trust, feel and acknowledge it [the power] to be a most wholesome and salutary one." In short, it may truly be said that neither the specific guarantees of private rights nor the constitutional method of enforcing them were produced by any convention. They were both evolutionary products of English and American law, experience and political theory. The meagerness of the debate on these important matters indicates that they were largely taken for granted. A number of the members agreed with Ewing, who objected to the bill of rights as unnecessary because its truths "are universally recognized and will be universally supported." As Mr. Hornblower put it, "They are written on our hearts. Why shall we tell ourselves what our rights are, or protect ourselves against ourselves?"

This does not mean that the elaboration of the bill of rights in Article I of the new constitution was unimportant. The convention

did furnish an opportunity for crystallizing and harmonizing tendencies generally but not yet universally recognized and agreed upon. It introduced greater certainty into parts of our constitutional law and gave the legislature and the courts more definite standards of conduct. There was much propagandist exaggeration in the complaint of advocates of a convention that the lack of a real bill of rights put the rights and liberties of the citizen in daily peril; but underneath the exaggeration there was probably enough truth to furnish a valid argument for constitutional revision. Then as now, however, the real security of these rights lay in the vigilance and the traditional conservatism of the people of New Jersey, rather than in the writings of judges, legislatures or conventions.[98]

THE FRAME OF GOVERNMENT

The burden of the attack on the constitution of 1776 was borne, year in and year out, by the frame of government. The battle cry of the attackers was almost invariably "the separation of powers"; the precise line of attack shifted from one to another of the potential calamities and "real mischiefs" which Griffith and others attributed to the violation of the separation of powers principle.[99]

There were not many who had the temerity, as Republican sentiment grew, to object with one writer that "The Legislature of New Jersey, unlike that of the United States, is not composed of the monarchy, the aristocracy, and the democracy, so necessary to an equilibrium, or a balance in the state." This complaint bolstered with extensive quotations from John Adams, charged "that there is no separation and balance of power in the Constitution of New Jersey; and, consequently, that we do live under an elective despotism." In support of this charge the writer pointed out that the two houses of the legislature were composed of "the same sort of men," re-elected annually by the same voters; and that this "almost consolidated legislature" might exercise legislative, executive and judicial powers without limit, "for the Governor has no negative, and the Judges may be starved."[100]

The aristocratic bias of this indictment aside, the simple deduction that "there is no separation and balance of power in the Constitution, . . . consequently . . . we . . . live under an elective despotism," was characteristic of many of the more temperate expositions of the defects of the constitution. Griffith, when he predicted that "society under the dreadful irregularities and vices of the present system, will not much longer be tolerable," must have been influenced

as much by what he considered the *inevitable* consequences of the "theoretic errors" of the constitution as by any of the "actual evils" noticeable to an unprejudiced observer.[101] The failure of the revisionists to get their convention until 45 years after this gloomy prophesy had been uttered attests to the unconvincing effect of such exaggerated *a priori* argument on a people who did not really *feel* tyrannized.

There were, however, some actual evils of considerable magnitude and a number of inconveniences which the people had to suffer under the old constitution. Most of these evils and inconveniences could be plausibly related to the violation of the separation of powers theory. They were certainly serious enough to justify attempts to change the constitution, and one of them can be credited with having sparked the final successful drive for the convention of 1844.

The "actual" evils which were most commonly cited were (1) the alleged incompetence and subservience of the courts; (2) the corruption and dissipation of the legislative power because of preoccupation of legislators with judicial and administrative patronage and functions; and (3) the overloading of the governor with an insupportable burden of legislative, judicial and executive duties. There were a number of minor inconveniences incidental or contributory to each of the major evils.

(1) A Dependent Judiciary

In 1786, after 10 years in office, William Livingston, the first governor of independent New Jersey, told the people some of the things that he thought were wrong with their government and politics. One of the strongest counts in his indictment bears on the first two of the major evils listed above:

> I have seen justices of the peace who were a burlesque upon a magistracy, justices illiterate, justices partial, justices groggy, justices courting popularity to be chosen Assemblymen, and justices encouraging litigiousness. But I have not seen any joint meeting sufficiently cautious against appointing such justices of the peace.[102]

Since justices of the peace sat as common pleas judges in the civil, criminal and probate courts of the county in those days, this condition was more serious than it would be today. Fifty-eight years later we read the same complaint, this time by a Whig newspaper summarizing the misdeeds of the late Democratic legislature: "It has abused the

appointing power, by appointing 800 unnecessary officers, many of them unfit for and unworthy of judicial stations—and all for the purpose of strengthening party interest."[103] In fact disparagement of the judges of the inferior courts was chronic. For example *The Trenton State Gazette* in 1837, reporting that "No joint meeting was held as a consequence of a disagreement between the two houses," remarked that "In regard to [the appointment of] county judges and justices, it can not but be matter of satisfaction to the people, since the state is already swarming with these men clothed in a little brief authority, many of whom neither reflect credit on themselves, or those who appoint them."[104] Griffith pointed out that the evil of legislative appointment was aggravated by the lack of any constitutional limit on the "number of county judges and justices." Consequently, "almost every session of the legislature, produced an accession to the list of judicial officers in the several counties," resulting in increasingly unwieldy county courts composed largely of untrained, undisciplined, shifting partisans.[105]

The complaints against the higher courts were equally vigorous. Griffith devoted many pages to demonstrating that the State's highest courts could not possibly display "*three* characteristics essential in the composition of a perfect judiciary system; *namely* INDEPENDENCE, ABILITY, and OFFICIAL INDUSTRY."[106] In the first place, the *"high court of errors and appeals"* was the politically elected council composed of men possessed in general of "less knowledge of the law" than "twelve respectable justices of the peace." In fact justices of the peace, sitting in council, might reverse the same professional supreme court which revised their own decisions as justices![107] In the second place, both the chancellor and the supreme court justices were dependent on the legislature for appointments and salaries. In the third place, the multiplicity of the official duties of the chancellor and councilors prevented their giving adequate attention to the judicial part of their work.

This indictment was repeated again and again until 1844. The 1799 Gloucester County grand jury expressed "the opinion that the existing form of government is greatly defective, and tends, in its operation, to injure the rights of the people," and "that the public administration of affairs is most prompt and the liberties of the citizen most secure, when the executive, the judicial and legislative branches are kept separate and distinct." The grand jury then called special attention to "the great impropriety of making the members of the Legislative Council, the court of law and equity in the last resort;

whereby the legislative duties of that body are impeded, and the justice of the country rendered fluctuating, expensive and oppressive, by the incapacity of the court, from defect of legal knowledge, to revise the judgments and decrees of the Supreme Court and the Court of Chancery."[108]

An editorial in *The New York Spectator* for April 13, 1799, pointed out that while other states had been "erecting barriers against tyranny and all the confusions which arise from consolidation of powers" by "separating the legislative from the executive and judicial departments," the State of New Jersey was enduring "a constitution which disgraces her citizens and disposes life, liberty and happiness, and property, to the most palpable abuses." The editorial continued:

> There is not now in New-Jersey, one single tribunal entrusted with the decision of legal controversies, which can be said to possess the qualifications of *CONSTITUTIONAL* independence and impartiality: they all of them are shackled by party, or influenced by dependence; and the measure of justice is not the law of the land, but some other measure, which is better calculated to keep the judge in commission, or promote the objects of his party. . . .

These are impressive charges, and one wonders why the State waited another 45 years to rid itself of a constitution which seemed so disgraceful to the neighbors. The truth seems to be that the picture was greatly overdrawn. There can be no doubt of the validity of the general indictment of legislative appointment of county judges and justices. There also seems to have been some force in the claim that the political council, acting as court of appeals, sometimes reversed the professional supreme court on political grounds. Chief Justice Hornblower, speaking in the convention of 1844, remarked that the court of appeals had "long since been christened by eminent counsel, not the Court for the correction of Errors but the Court of high errors!" The chief justice was almost certainly exaggerating when he asserted "with boldness and confidently" that "In more than half of the cases which have been decided in that Court for forty years past . . . the *causes* have not been tried, but the *parties*, or the *tribunal* from which the appeal has come." Such action was doubtless frequent enough to emphasize the obvious "impropriety" of combining the highest judicial functions of the State with the legislative and administrative duties of the annually elected upper house and to lend pragmatic support to the "axiom . . . that the great departments of government . . . should be left separate and distinct."

One evidence of the exaggeration in these charges is the growth and acceptance of judicial review and the esteem in which it was obviously held by members of the convention of 1844. Another evidence is the opposition of conservative Whigs, naturally solicitous for vested rights, to the calling of the convention. Still another is the uniformly high caliber and prestige of the court of chancery and the supreme court. As members of the convention asserted, the legislature had done a good job of naming competent men as chancellors and supreme court justices. Probably the outstanding exception was William Rossell "who knew no law at all, but was a sadler [sic] of good character," elevated to the supreme court in 1805 because of the dearth of legal talent in the young Jeffersonian party.[109] Despite the hostility of the early Republicans to lawyers, this lack was soon overcome, and from Governor Bloomfield on the chief spokesmen for the party were lawyers. Probably the conservative influence of the lawyers was as responsible as any one cause for the fairly smooth and uneventful functioning of the system which so greatly alarmed Griffith. It should not be forgotten that some of the best lawyers in the State found their way as councilors even into the much maligned "court of high errors," and that the chancellor was presiding judge of that court.

Griffith's lack of confidence in his own profession led him into unnecessary pessimism concerning the future. Paying his respects to "The short-sighted and the malicious," who "ascribe much of the procrastination, expense, and errors in the courts of justice, to *lawyers*," Griffith ventured in 1799

> to affirm, that New Jersey, at this moment, is indebted for what *remains* of the dignity, the certainty, and utility of legal science, to the profession of the bar; they have formed the only barrier that has obstructed the general demolition of law, and the forms of law: when they become as mercenary and corrupt, as the *judiciary establishment* is weak and vicious, deplorable indeed will be the condition of men and property.[110]

How relieved Griffith would have been if he could have known that more than a generation later de Tocqueville would write, without excepting New Jersey, that the authority which the Americans had "intrusted to members of the legal profession, and the influence which these individuals exercise in the government, is the most powerful existing security against the excesses of democracy."[111] To de Tocqueville the lawyers seemed to "constitute *a body*," in which he found "the American aristocracy," and without which he doubted "whether

democratic institutions could long be maintained."[112] The existence of such an aristocracy, tempering or diluting pure Republicanism while it controlled Federalism, was suspected and denounced by dissatisfied members of the party of the common man in New Jersey.[113]

The characters of the chancellors and supreme court justices during this period lend substantial support to this thesis. In general, the leading members of bench and bar of both parties had the same social background and associates. Among the Democrats, Governors Bloomfield and Vroom were converted Federalists; the Dickersons belonged to a wealthy family; Williamson's conversion from Federalism was questioned periodically, although he was repeatedly re-elected by Republican legislatures. These men can hardly be distinguished from their brethren who were always Federalists or Whigs, or from others like the Penningtons who started as Republicans and became Whigs. Despite the talk, sometimes bitter, of aristocracy *vs.* democracy, New Jersey was governed by much the same kind of men from 1776 to 1844, and these men displayed a high level of ability and responsibility.

Griffith had suggested the horrid possibility that "The joint-meeting . . . may appoint a child, a bankrupt, an alien, or a criminal convict for the governor and chancellor of New Jersey. . . ."[114] But Richard Field, writing in 1848 pointed out that all the governors between 1776 and 1844 had been lawyers. Furthermore, Field described them as a succession of Governors, of whom New Jersey may well be proud, . . every one of whom shone as a star of the first magnitude."[115] Concerning the whole succession of chief justices, Field was equally laudatory.[116] The average service of the 16 chancellors during that period was, despite annual election, more than four years; and 45 of the 68 years were included in the terms of only four men. Despite seven-year terms fixed by the constitution, there were only five chief justices between 1779 and 1844. It is certain that men of the type justly eulogized by Field would not have continued to occupy the highest judicial posts in the State if the whole "judiciary establishment" had been as "weak and vicious" as Griffith, in his argumentative zeal, tried to make it seem. Besides, there seems to have developed such a sentiment for reappointment of justices that the few occasions when a member of the supreme court was denied reappointment for political reasons gave rise to vigorous and exemplary public criticism.[117]

Great defects there were in the judicial arrangements under the constitution of 1776; but they did not prevent a fairly satisfactory performance, at least by the highest *professional* judges, and they did not prevent the firm establishment of the courts as the guardians of

the constitution and of private rights. As Erdman wrote, "What foundations in fact there may be for the Jerseyman's pride in the slogan 'Jersey Justice' have not been laid exclusively since 1844."[118]

(2) The Legislative Vortex

It will be recalled that the Gloucester County grand jury of 1799 had stressed the fact that the judicial duties of the legislative council "impeded" its legislative duties. In like manner, the repeated complaints against appointment of judges and other officers by joint meeting lamented the bad effect on the legislature even more than the alleged inferiority of the appointees.

This theme was developed with much spirit by Griffith.[119] He declared "that the primary and important office of the *legislature*, is to deliberate on the general condition of the state, and with caution, moderation and impartiality, to pass *laws* for the redress of grievances and the public good. . . ." Unfortunately the efficient and virtuous performance of this essential duty is obstructed because it is combined with "the promiscuous election of the executive officers of government." In fact, "No essential power is left in the hands of an executive. The *joint-meeting*, as it is called, of the legislature, possess the only considerable branch of executive duty and responsibility, that of nominating and appointing to all the offices of any importance, civil, military, judicial and ministerial."

To Griffith, "it appears, that Pandora's box . . . did not more completely poison the earth, than the constitution of New Jersey has effectually poisoned the legislative body, by blending with its functions the appointment of the public officers."

He discloses the way in which the appointing power tends "to *corrupt* the legislature" by giving a vivid word-picture of what happens when the legislature agrees upon a joint meeting:

> Then begins a scene of intrigue, of canvassing and finesse, which baffles all description, and is too notorious to require proof, and too disgusting for exhibition. The members of a county, in which an office is to be disposed of, are beset by friends and partisans of the candidates; their hopes and fears are excited; . . . from these, the attack extends itself, 'till it reaches every member of the legislature; and so strong and so general does the contest become, by the different representations, having each particular objects to attain, that one grand scene of canvass and barter ensues: a vote for one, is made the condition of voting for another, without regard to qualifications; even laws which are to affect the public interest are made the price of these interested concessions; and not unfrequently is almost the whole sitting of the legislature spent in adjusting the pretensions, and marshalling the strength of the respective candidates for office. . . . New commissions, civil and military, judges and justices . . . will be made with a reference to the state of parties in the county. . . .
>
> The result of all this, is seen in every quarter. From hence . . . arises the instability of laws, the multiplication of magistrates, the weakness and division of the courts of justice, the heats and ill-directed zeal at elections, and that general languor and dereliction of principle in every department, which menaces the total depravation of the body politic.

Further on Griffith points out that the evil of joint-meeting appointments is aggravated because "the liberty to choose from their own body, begets the most ambitious views, and the most inveterate rivalships. . . ." And he explains the impunity with which such outrages are committed by asserting that "there is no responsibility in a numerous annual assembly of delegates. Each one may propose and vote as interest, partiality or ignorance dictates: wicked, weak and designing men are thrust into office in the dark; the fault attaches to no one in particular; each flings it from his own shoulders, or bears but his proportion, and the people are obliged to submit to the imposition."

Griffith said about all that could be said in description and denunciation of the "corrupt compositions, derelictions of public duty, venality and all the low intrigues" of joint meeting. How accurate was his philippic? Allowing for his picturesque choice of nouns and adjectives, it seems to have been justified.

Griffith's description of joint meeting was repeated with equal vigor and almost equal color by Messrs. Zabriskie, Browning and Field in the June 12 debate of the convention. These speakers, drawing on personal experience and observation, corroborated Griffith's charge that the lust for appointments often controlled the election of legislators and the enactment of laws. No student of politics can fail to be entertained and instructed by their exposition of the process by which a multitude of distinct personal interests and ambitions were launched by electioneering, promoted by lobbying, consolidated by logrolling and finally forced upon the State through action of joint meeting at the behest of a minority of anonymous legislators hiding

behind "King Caucus." As Mr. Browning pointed out, a divorce bill, an office and railroad acts might all be tied up together in one bargain bundle. Although some members of the convention resented the implications of these speeches and denied knowledge of any actual *corruption,* it is impossible to read through and between the lines of the debates without concluding that the power of the legislature to elect a *large number* of officers had proved completely incompatible with the public interest, however responsibly the legislature had usually behaved in selecting the relatively few State officers.

Ex-Governor Vroom, too, testified in the convention that "If there is one feature in the old constitution obnoxious to the people, and which they wish to see blotted out, it is the form of appointment by joint meeting." If all or most of the appointing power were taken away, Vroom felt that "To come to the Legislature will be like filling an office of honor or trust—they will come to make laws and not justices of the peace."[8] A Democratic newspaper in neighboring Pennsylvania, in a eulogy of John R. Thomson, one of the Democratic leaders in the convention movement, commented on the executive and judicial powers of the New Jersey legislature under the old constitution and asserted that "enormous patronage" had made the legislature "in fact every few years, but an executive body elected, not for the purpose of legislation, but to reappoint some hundreds of individuals who had sent to it their nominees, chosen by their money and their labor, to carry out the will of a body of unscrupulous office holders."[9]

It is necessary to distinguish between the appointment of the relatively few State judges and officers and the naming of the hundreds of county justices and officers. We have already noticed the uniformly high standard of appointments to the chancery and supreme courts. There seems to have been little complaint about the quality of other State appointments. During the sixty-eight years between 1776 and 1844, the State had only eight secretaries of state, ten attorneys general, ten treasurers, and ten adjutants general. There were only six quartermasters general between 1807 and 1844, and seven State prison keepers between 1811 and 1844. It is interesting to note that the typical state treasurer, although annually elected, lasted as long as the typical attorney general with his constitutional five-year term. These offices were usually held by men as distinguished as those who became governor, and were vacated in many instances by resignation or promotion of the incumbent rather than by the expiration of a term. The relatively long tenure was due partly to the long periods of control by one party, but it indicates that the agitation over these posts was by no means as

annual affair. It was the county appointments which offered the great opportunity for logrolling and bargaining. One reason for the multiplication of county judges and justices was that they "cost nothing to the treasury."[121] The functions of the State government did not invite and its resources did not encourage a similar multiplication of State functionaries; besides, Jerseymen were very insistent on a frugal State government in those days.

On the other hand, it cannot be doubted that the making of State appointments sometimes overshadowed and affected the strictly legislative conduct of the legislature, and there were a number of occasions when it caused serious difficulties or justifiable complaint. The appointment of militia officers provided an opportunity for State patronage without expense to the treasury. It is therefore not surprising that most of the high militia officers appointed under a new law in 1793 were members of joint meeting, or relatives of members. This illustration of the concentration of power in the legislature naturally furnished the revisionists of the time with useful ammunition.[122] A similar opportunity for party patronage without taxing the treasury occurred when the Republican legislature of 1812 created six State banks and filled a majority of the offices and directorships with prominent Republicans.[123] Fortunately the patronage possibilities in the creation and staffing of semi-public corporations, were never fully exploited. More disturbing to the smooth conduct of regular business was the 1802 deadlock over the election of governor and United States senator, which resulted in a year's interregnum with the vice-president of the council acting as governor. A similar deadlock was narrowly averted in 1841, when the Whigs in an evenly divided council were balked in their attempt to prevent the holding of a joint meeting only by the casting vote of the governer.[124] These and other less consequential deadlocks indicate a danger which might have become serious if there had been considerable periods of divided or precarious party control of the two houses.

The preoccupation of the legislators with patronage and the details of executive and judicial functions would have affected their deliberative and law making functions more seriously at a later date. The "Garden State" was just entering the industrial revolution by 1844 and the modern age of economic and social legislation, expensive public services and large scale government was still around the corner. Consequently the legislature could spend much time not only on appointments but also in passing special acts to do things now handled by administrative or judicial action and still adjourn in time for spring

plowing. Corporation charters, whether for the Camden and Amboy Railroad, the Newark Banking and Insurance Company or the Pedricktown Steam Saw and Grist Mill Company were granted and renewed by the legislature. Divorces were also granted by special acts, a practice which came in for more and more caustic criticism. For example, *The Monmouth Democrat* complained of the "lengthened and unprofitable session" of the 1842 Whig legislature, which had not adjourned until almost the middle of March! The *Democrat* noticed that 16 divorce acts had been passed, and observed: "This is truly a melancholy spectacle, and does not speak well for our legislators. Had they attended more to the public business, and less toward dissolving the marriage contract, so many important bills would not have been laid over until the next session, and the wants and interests of the people would not have been so shamefully neglected. . . ."[125] This objectionable and wasteful practice furnished one of the minor arguments for changing the constitution.[126]

It is hard for us to realize how little State government we had in those days. In the years immediately preceding the convention of 1844, yearly State disbursements were about $160,000. The only State institution was the prison. A writer in the *Jersey City Advertiser and Hudson Republican* for March 30, 1841, criticized the legislature for its inattention to the report of a commission appointed in 1839 to investigate the number and condition of the insane and advise on the need for an asylum. He continued:

> We have no hospitals for the sick; no refuge for the youthful delinquent, the orphan, and the aged and infirm; no asylums for the blind or the deaf and dumb; while our provision for the insane is but insuring their perpetual lunacy, incarcerating them with felons, or crowding them with objects of distress and helplessness in our public poor-houses, which in most cases are the most unsuitable residences for the shattered, depressed, and wandering in mind. In these respects we as a state stand in the most unenviable singularity, considering the age of this commonwealth, its resources, and the intelligent respectability of its inhabitants.

It was not until the legislature was shamed by the receipt of Dorothea Dix's famous memorial in 1845, that the establishment of the first State hospital at Trenton was authorized.[127]

People who were impatient at such delays in dealing with the few important questions of *public* interest were inclined to blame the legis-

ture for wasting time on other matters of more *political* interest. It impossible to say at this distance how much the executive and judial activities of the legislature did impede its consideration of some the new problems which were beginning to arise; but the time was rtainly approaching when the legislature would have been swamped its combination of dissimilar powers and duties. The only way to oid such a result would have been to put the appointing power of int meeting at the disposal of the governor or a small cabinet committee and to exercise the judicial power of council as court of appeals ly on the advice of a fairly stable body of professional judges. Self-nying ordinances are practically unknown to American legislators, owever. The whole weight of our political tradition, the intensely al orientation of the typical American representative and the independence of the two houses were all against any such development. his being the case, those who looked to a constitutional convention to rune the overgrown prerogatives of the legislature and to distribute nctions more consistently with the separation of powers principle ere doubtless wise in their own time.

3) The Overburdened Governor

Erdman credits the increasingly irksome combination of the chief agistrate's duties as governor and chancellor for a statement in overnor Pennington's message in October, 1840, which "sounded e deathknell of the constitution of 1776."[128] Erdman suggests that Litigations growing out of the many failures caused by the 'panic 1837" may have added to the already burdensome duties of the hancellor. . . ." In any event, Governor Pennington, speaking viously for Chancellor Pennington, advised that "The increase of siness has been so great that it now requires the whole attention of e Chancellor; and the nature of his duties calls for permanency in e officer." Although Governor Pennington cautioned that "alterations the constitution of government under which a people have lived ng and happily should be made with caution and jealousy," he had t his finger on one *practical* weakness in the constitution which could ot be denied.

Griffith had discovered this weakness.[129] First, it was wrong in rinciple: "The effective powers of governing, consists [*sic*] in the *aking* of law, *expounding* law, and *executing* law." If the blending all three powers in the legislature and a governor dependent on it d not yet ruined the State, Griffith was confident that it would be-me very dangerous indeed "as corruption and intrigue progress with

society" and governors learned to use their vast powers "for *no other* purpose than to *maintain*" their seats.[129] Fortunately the joint progress of corruption and society were not so rapid as Griffith anticipated, or New Jersey could not have enjoyed a series of good and conscientious governors for the next 45 years. But Griffith did have something when he pointed to the "*inability* of any *one* man (however industrious, and however capable) to perform the necessary duties" as governor, commander in chief, president of council and the court of appeals, chancellor and ordinary. Aside from the remarkable versatility required for the expert handling of all these tasks, they were bound to compete for time and attention, to the detriment of prompt and considered action on the public business. Griffith remarked that "It is not astonishing to hear complaints of the difficulties and delays of cases in equity; but it is astonishing that a case should ever be decided in that court. . . ."[131] This was a condition that was bound to get worse as time went on, no matter how well the governor might have been provided with administrative aids and advisory masters in equity.

A writer in 1809 commented on the "heterogeneous and conflicting powers" of the governor "which, taken altogether, it is impossible for any individual properly to execute." He explained that "in conformity with British usages, these offices were thrown into the lap of the executive at an early period of the settlement of New Jersey; and I shall not pretend to say that reasons may not have existed for killing the executive with their weight during the ticklish period of the Revolution; but now . . . it is time for us to look calmly upon the actual state of our affairs. . . ."[132]

Councilor Wright in debate on the 1844 convention bill described the governor's work week: "No one who has seen in the last week, how miserably our present constitution works, can doubt that it should be abolished. We see our Governor at one time presiding here as President of Council, at another presiding in the Court of Chancery, then in the Court of Pardons, and then in the Court of Appeals, simply because our constitution, as we call it—though it never deserved that sacred name—is so imperfect."[133]

Inevitably, it was the adverse effect on the performance of the chancellor and ordinary which was considered most serious. Governor Pennington spoke of the need for "permanency" in the chancellor. Annual election had not rendered the office as fluctuating as it might have; but the occasional periods when the vice-president of the council had to act as governor accentuated the difficulty. Moreover, the office showed a tendency to change hands more frequently in later years, 7

times in fact between 1829 and 1844, as against only 13 times between 1776 and the end of Williamson's 12-year term in 1829.

An incidental objection to the combination of judicial duties with the civil and military duties of the governor was that it forced the legislature, unless it stooped "not only to folly, but extreme wickedness" always to appoint a lawyer as head of the State.[134] Aside from the difficulty of finding a lawyer, or anyone else who "unites in his person, the acquirements of a soldier, of a statesman, and a judge," the practical exclusion of all but the members of one profession from the governorship was a "subject of complaint, and a constant jealousy. . . ."[135] This must have been particularly irksome to those democrats who resented the influence of the legal "aristocracy" generally. Councilor Wright reflected some of this resentment in the following remark in debate on the 1844 convention bill: "I know, sir, that some may desire to preserve the restriction which prevents anyone but a lawyer from being governor—not directly it is true; but indirectly by making the governor, chancellor—an ingenious trick, meanly devised for the protection of some poor lawyer, who may think this his only chance of being governor."[136]

THE REPRESENTATIVE PRINCIPLE

In addition to those criticisms of the frame of government which were associated with the defiance of the separation of powers principle, certain questions were raised concerning the representativeness and terms of the legislative bodies.

We have already noticed the desire to shift the constitutional date for commencement of the legislature from the fall to a more convenient time in the winter. Governor Pennington spoke of this as one of the few changes which he felt were needed in an otherwise satisfactory constitution.

Although extension of the terms of legislators in the interest of economy and a reduction in the constant political agitation occasioned by annual elections was earnestly debated in the convention, there seems to have been relatively little interest in this subject in most parts of the State.

The constitution of 1776 contemplated but did not compel occasional re-apportionment of the assembly "on the principles of more equal representation." The assembly started out with three members from each county. Re-adjustments were later made, but they were not kept up-to-date according to a strict rule. Griffith considered it a

serious defect in the constitution that it failed "to provide some steady and impartial rule" by which representation might have been proportioned to the taxable population in the interest of "public tranquillity, and the equilibrium of the public rights."[137] A writer in 1816 also objected because "the ratio of representation is not fixed."[138]

There seems to have been relatively little determined public criticism of equal county representation in the upper house. To be sure, Griffith in his general criticism of representation had stated categorically that "The people of New Jersey, and not the *counties*, were designed to be represented in the legislature. Surely," he continued, "if a law were proposed and the sense of the *people* actually taken in *person*, and not by delegation, it would be thought monstrous, that two hundred votes from Hunterdon (for instance) should be balanced by one hundred from Burlington. . . ." It is equally wrong to produce this result where the people "act by delegation, which is nothing else than transferring their identical constituent powers, rights and interests to the management of substitutes. . . ."[139] Griffith was talking primarily of the assembly; but his criticism applied as logically to the council, and he did not take pains to differentiate between the two. Perhaps he was purposely vague.

As time went on there was some talk in the large counties of reforming the upper house, as the bitter debate in the convention indicates. That this talk had alarmed small-county men was evident from debate in assembly on the 1844 convention bill. Mr. Willetts of Cape May, then as almost always the smallest county, objected because the proposed convention would be based on representation in the assembly only. This, he said, was unfair. "And, sir," he continued, "I understand (out of doors it is true, but) from undoubted authority, that the state is to be districted; and that the new constitution is to deprive the small counties of their equality in the other branch of this House. Sir, I should be unworthy to represent the people of Cape May if I did not resist this in its incipient stage. They will never submit to it."[140] The convention proved to be safe for Cape May, but Mr. Willetts sounded a battle cry that has echoed down through the years.

6. THE CONVENTION OF 1844

When the convention was finally called, it came and went with a rush. It had taken half a century to get the convention; but in less than six months after the legislature passed the act calling it, New Jersey had a new constitution. The Democratic leaders who pushed the convention bill through the legislature with the aid of the party caucus were determined that there should be no more delays. The law, therefore, set a very tight time schedule, which, as Dr. Erdman has pointed out, "called for clock-like precision of action which might well have been upset had party strife entered into the question of constitutional reform."[141] The act was passed on February 23 and set the date for electing delegates on March 18, only three and one-half weeks away. The delegates then assembled in less than two months, on May 14. They met almost continuously until June 29, when they adjourned in order to permit publication of the document in time for the vote of the people set by law for August 13. There was, of course, no preliminary work by a research committee, now regarded as a prerequisite to a successful convention. There was little time for study, reflection or extended discussion by the public or the delegates. Eight committees were appointed on May 16, the third day of the convention, to report on different parts of the constitution. The speed with which they worked is indicated by the fact that three of them reported the very next day.

Freedom of debate was allowed; but discussion was occasionally cut short by the parliamentary device of calling the "previous question," and the pressure of time sometimes weighed on the delegates to prevent the thorough exploration of a subject or the resolution of differences rising from inadequate preparation or disagreement on facts. The delegates obviously thought of the United States Constitution as a model. The manifest inferiority of their document in clarity, arrangement, and style is at least partly due to the enforced haste with which it was assembled from the amended committee reports.

The Whig minority in the legislature had criticized the proposed time schedule and pointed out that the convention could at least postpone the submission of its proposals beyond the date set.[142] This was later suggested in the convention; but the majority of that body felt impelled to adhere to the prescribed calendar.

The Spirit of Party

Fortunately the party spirit which was evident in the fight over the calling of the convention was put largely in abeyance as soon as the law was passed. A week before the convention bill became law, the Whig *Trenton State Gazette*, anticipating its passage, pointed out that the time for selecting the right persons as delegates was very short. "It is especially important," declared the *Gazette*, "to call out from their retirement, the wise, the disinterested, and the good—the men who do not seek office, and will not, therefore, multiply offices—the men who do not need employment from the public, and will therefore not create an expensive government. . . ." Declaring that "It matters little of what party they may be," the editorial expressed the wish "that this convention may have no partisan character to sustain, no partisan responsibilities to bear, and consequently no partisan objects to divert its single eye from the one great end, the future good government of New Jersey."[143]

In the spirit suggested by the editorial, a proposal to avoid party contests and to divide the delegates evenly between the two parties was issued March 1, by the Democratic and Whig central committees, the members of the legislature and 40 other prominent citizens. The Democratic sponsors of the convention bill had paved the way for such action by turning down a proposal to hold the election of delegates at the annual town meetings in April, when township officers would be chosen. The elimination of the special election was plausibly urged on the grounds of economy and public convenience, in view of the fact that there would otherwise be *five* elections that year: the election of delegates in March, township elections in April, the vote on the constitution in August, the regular State election in October and the national election in November! The controlling reason for going on with the whole orgy of elections seems to have been to secure a vote for delegates "on a day upon which politics would not enter." As Councilor Wilson explained, "the day of the town meetings was a day for political strife, and the trial of party strength," while the revision of the constitution "was a matter not interesting any party, but the whole state."[144]

The plan was to have each party nominate only enough men to fill half the convention seats. Accordingly, each county was given a quota by the party leaders which reflected roughly its political composition. Thus Morris, which was about evenly divided, was to have two Whig delegates and two Democratic. At the last moment, however, ardent Monmouth Democrats, who were in complete control of their county,

nominated a full slate, and the party swung into line to elect them all and establish a Democratic majority in the convention. In all the other counties party leaders had nominated only the number assigned to them in keeping with the State-wide agreement. Though it failed in the one instance, the plan was commended by Judge J. A. Jameson in his celebrated treatise on constitutional conventions as "a very remarkable exhibition of moderation." So impressed was Jameson that he added: "It is impossible to commend too highly an example which must have sprung solely from a view to the public good."[145]

Once assembled, the delegates made a valiant and largely successful effort to lay the devil of party spirit. "Thank God," exclaimed Whig Chief Justice Hornblower, "we have not assembled here as a body of political gladiators. . . . We have come to do a work for posterity; not for ourselves." [illegible] opinions were often stoutly maintained in debate, delegates, remembering the hurdle of ratification, showed a disposition to give way on details which they feared might compass the defeat of the whole document.

The Monmouth Democrat on July 4 congratulated the people on the conclusion of the convention with the submission of "one of the most perfect constitutions in the United States." This happy result was attributed to the fact that "The same spirit of compromise under which the delegates were elected, has characterized their labors throughout." Continued the *Democrat:*

> We do not hesitate to venture the remark that such a Convention never before assembled in this or any other country. Composed as it was of men of strong party predilections—on the eve of an important presidential election, it was but natural to anticipate party excitement; and yet party spirit has at no time controlled the action or been exhibited in speeches of the members. There have been some instances, when on questions of principle, members have shown their attachment to party measures by their votes. This was to have been expected. But viewed as a whole, such an exhibition of patriotic devotion to country, and high regard for principle, has not been exhibited since the great Convention of 1789 [*sic*].

Perhaps the *Democrat* was tempted to exaggerate the nonpartisanship of the convention because it was originally a Democratic party project adopted over Whig opposition. Besides, the Monmouth Democrats may have had a conviction of sin over their own refusal to join the

scheme for bipartisan election of delegates. The popular vote of 20,276 for to 3,526 against the new constitution shows, however, that the result was satisfactory to both parties, which certainly would not have been the case if many important decisions had been made on strict party lines.

When one recalls the heat of party controversy in the "Roaring Forties," this "exhibition of patriotic devotion to country" as distinct from party appears all the more wonderful. Compare it, for example, with the following appeal to political reason which was to appear in the same paper in October as an argument against the Whig candidates for president and vice-president:

> TO THE MEMBERS OF THE SOCIETY OF FRIENDS
> IN NEW JERSEY COMMONLY CALLED HICKSITES
>
> What say you to Theodore Frelinghuysen, who denounced you in his speech before the Court of Errors as Deists? What say you, also, to the man of blood, Henry Clay, who has fought three duels himself, and wrote the challenge for Graves which ended in the murder of Cilley? Will you vote for a libeller and a murderer?[146]

Incidentally, the *Democrat's* jubilation over the adoption of the constitution almost turned to ashes in the fall, when John R. Thomson, the Democratic candidate for governor, dubbed by his supporters "the father of the constitution" and "the poor man's friend," was defeated by Stratton, a fellow delegate. Charging that the Whig victory was due solely to "misrepresentations, unfounded charges, and other diabolical schemes conceived in corruption," the *Democrat* lamented that

> it remains now for the people of the state to submit to misrule in every department of its government for years to come. . . . Aye, the very Constitution which was framed by the Democracy of our State, is doomed to be perverted in every possible way—the privileges therein guaranteed to freemen, to be subverted from their intent—the whole beautiful fabric, which in the hands of good men would have been so effective in promoting a wise legislation and just administration of the Government, is now, by the action of designing demagogues, to be defaced and shattered—perhaps demolished![147]

Here again was the authentic voice of party spirit!

How, then, can we account for the "remarkable" political truce, between the "loco focos" and the "coons," to use nicknames contemptuously exchanged by Whig and Democratic partisans? In the first place, the normal differences between the parties were not such as to engender critical disagreements over provisions of the State constitution. Both parties inherited members and principles from both the Federalists and the Republicans. The parties divided primarily on national issues, or rather on the personalities and programs of their national leaders. The one State and local issue constantly between the parties then, as now, was the distribution of the jobs. The question of the propriety of calling a convention furnished an issue out of which political capital might be made; but once it was decided, the safest course for both parties was to co-operate in making a good record, lest one be able to blame the other for a fiasco. Since the major theoretical and practical objections to the old constitution were generally agreed upon, and there was really no special advantage which either party could hope to get, this co-operation was easier to achieve than a casual reading of the language of current political controversy would suggest.

It is a fact sometimes not fully appreciated that national politics overshadowed State politics from the day the United States constitution was adopted. What Woodrow Wilson called New Jersey's "very singular position in the sisterhood of states" accentuated the condition in this State.[148] New Jersey had no underprivileged frontier struggling to win political equality from an entrenched tidewater aristocracy. It had no great territory over the development of which promoters and politicians might contest. Its position between the two great states of New York and Pennsylvania conditioned its economy, denatured its politics and restricted the scope of its government. Wilson remarked that "We have always been inconvenienced by New York on the one hand and Philadelphia on the other. . . ."[149] In 1844 it seemed to Dr. Schenck, Whig delegate from rural Somerset, that "The peculiarity of our geographical position between two large States precludes us almost entirely from any participation in the profits and advantages of commerce. This great source of state wealth is almost exclusively enjoyed by New York on the one hand and Pennsylvania on the other." Consequently, the doctor, who had banking and manufacturing interests in Newark, advised a policy hospitable to manufacturing enterprises. But the industrial revolution was just beginning in New Jersey. It had not yet produced a large urban interest ready to com-

pete openly for power with the rural interest, nor had it generated the need for extensive economic regulation and expanding public services which soon increased the importance of State government and furnished new bases for political differences. In 1844 New Jersey was still chiefly a land of small farmers, as it had been for generations. The industrial centers at Newark and Paterson and the visions of other teeming cities scattered about the state gave scope to the imagination, but relatively little novelty as yet to the traditionally rustic tone of New Jersey politics.[150] New Jersey was still the kind of society in which Jefferson would have thought a healthy democracy possible.

These facts help to explain the continuation of the historic conservatism of New Jersey, which has been traced back to early colony days.[151] More specifically, they help to explain why, on the whole, the movement for constitutional reform had little of the element of class conflict in it and was seldom very intense. It was mostly a matter of political theory and practical convenience. To the political parties, it was usually just another issue which might or might not have some nuisance value. When the inconveniences caused by the old constitution became too great for either party to ignore them, there was nothing left to delay revision but a little jockeying for position and some squabbling over method.

THE DELEGATES

An introduction to the personalities of the convention—to the 58 men whom the beneficent bipartisan deal of 1844 sent to Trenton on May 14—will throw still more light on the essentially conservative character of New Jersey's constitutional "revolution."

Who were these men? They included, in fact, a very fair selection of the ablest and most experienced men in the public life of the State.[152] Unfortunately we do not have a Charles Beard to gather the kind of detailed financial information about New Jersey's constitution framers that was assembled for the members of the federal convention of 1787. Thanks to the Writers' Project, however, we can give a pretty good general view of the characters in the convention, and especially of their political experience.

Only 8 of the 58 members are not known to have held some public office prior to their election to the convention. Of these 8, one, Mr. Browning, was of enough political importance to have been one of 40 signers, in addition to members of the legislature, of the manifesto asking for bipartisan election of delegates, and he was the first attorney general appointed under the new constitution. One, a painter, died in September 1844. At least four of the others later held public office, federal or State, in addition to Mr. P. B. Kennedy who was a colonel in the State militia. One of these was Connolly, publisher of *The Monmouth Democrat*. Van Arsdale, a seventy-three-year-old lawyer and banker, apparently never held office, but he was made chairman of the important committee on the judiciary.

At least 26 of the members had held office at two or more of the four levels of government, federal, state, county and local, before their election to the convention; and eight of these had held office at three levels. Three others had held positions in two branches of the state government, and two more had been in both houses of the legislature. Thus, at least 31, or more than half of the delegates, had had experience in government in two or more levels or bodies. Twenty-eight members had been assemblymen, four having served as speaker, and one also as assembly clerk. Still another delegate, although never a member of the assembly, had been clerk. Fourteen of the delegates had been councillors, eight of these with service in the assembly, too. Therefore, about three-fifths of the members of the convention had seen service in the legislature.

The convention included three ex-governor-chancellors (Williamson, Dickerson, and Vroom); and three supreme court justices, including Chief Justice Hornblower. Two others, Richard Field and R. P. Thompson had been attorney general. Mahlon Dickerson, seventy-four at the time of the convention, had had a most varied public career. After serving on the Philadelphia common council and as adjutant general of Pennsylvania, he moved to New Jersey, where he served in the assembly, as governor and on the supreme court, as well as in federal government as senator, Secretary of the Navy and judge of the United States district court.

Seven delegates had been members of Congress. Six had been freeholders and 13 had held other non-judicial county offices, while 5 had been mayors, and 10 had held other local offices. At least 16 members, 9 of whom were laymen, had held minor judicial posts.

No more needs to be said to demonstrate that, if practical experience could provide it, the convention should have had ample knowledge of the working of government in New Jersey.

Our biographies indicate that more than two-thirds of these men held public office for some time after the convention. Two of the delegates became governor, and at least three others made unsuccessful bids for the office. Fifteen were destined to sit in some capacity as members of the State's highest court under the new constitution. These

include Chief Justice Hornblower and Associate Justice Elmer, whose terms continued. Henry Green became chief justice and, later, chancellor. Five others became members of the State supreme court, and one other became chancellor. Seven members, including one lawyer and three doctors, became "lay" judges of the new court of last resort. Alexander Wurts and ex-Governor Vroom both declined the chief justiceship, the latter to serve as Minister to Prussia; while Chancellor Green declined, because of poor health, Lincoln's invitation to succeed Chief Justice Taney of the United States Supreme Court. Richard Field moved from the United States senate to the United States district court.

Two members held the office of attorney general, one, that of State treasurer under the new constitution, and several sat on State administrative boards. Six enjoyed terms in the State senate, and three, in the assembly, while four went to the United States senate and two to the house of representatives.

Two members were appointed to the constitutional commission of 1873, which wrote most of the important amendments to the constitution of 1844. One of these, Ten Eyek, was chairman of the commission; but Ryerson, who was currently serving as an Alabama claims judge, had to resign because of ill health. Alexander C. Cattell, the youngest member of the convention, became a distinguished financier, a United States senator, and holder of a number of important administrative posts in both the federal and State governments, including membership on the first United States civil service commission in 1871.

Undoubtedly the most versatile member of the convention was David Naar, its only Jew. Naar, who had lived his early life in the Virgin Islands and had held various civil and military offices there, settled in Elizabeth, where he became mayor and a common pleas judge before 1844. He later held other local and State offices, including the position of State treasurer, and he also served as United States Consul at St. Thomas. He was the first president of the New Jersey Editorial Association and showed an unusually active interest in scientific agriculture and various progressive causes. He was listed as a farmer, but he had been also a merchant and manufacturer and from 1853 to 1869 was publisher of *The Trenton True American*.

Another picturesque character was the fiery Middlesex Democrat, James C. Zabriskie. Listed at the time as a tailor, he had been active in New Brunswick as alderman, incorporator of a bank, and colonel of militia. He would doubtless have been heard from later in State

politics, had he not led a company of people to California in 1849. He became city attorney of Sacramento and author of a book, *Public Land Laws of the United States*.

It is apparent, therefore, that the writers of the constitution of 1844 had a good deal to do with its operation during its early years. We have already pointed out that the launching of the new constitution represented no drastic break in the constitutional tradition of the State. Neither did it mean a change in political leadership. This continuity of leadership before, during and after the convention helps to explain the character of the convention as a recorder of constitutional evolution rather than a harbinger of constitutional revolution.

The age distribution of the members of the convention was about what one would expect of a body such as we have described. Two members were under 30 and 10 were 65 or over; but 40, or more than two-thirds of the members, were in the prime of life, between 35 and 54. The extremes were represented by Cattell and Ryerson, who were both 28, and Williamson, who was almost 77 and unable to attend to the end of the convention. Williamson had been governor from 1817 to 1829, was highly respected and was elected president of the convention. Out of his experience he spoke forcefully for giving the governor real power.

For a State which was still primarily agricultural, it cannot be said that the farmers were over-represented, at least by farmers: so far as our records indicate, only four of the delegates can be listed simply as farmers, and one of these, Francis Child, obviously had important financial interests. Twelve others are credited with having combined agricultural with other business or professional activities. To be more specific, three of these "farmers" were also doctors; one, a boat builder; one, a surveyor; one, a resort-owner and business man; one, a manufacturer; one, a storekeeper; one, a merchant and large land owner; one, a bank president and business man; one had real estate, lumber, and glass interests; and one was David Naar. The lawyers, of course, were well represented, with at least 21 and probably 23 of their number in the convention; but it is surprising to learn that there were also 8 doctors, including the doctor-farmers. About a quarter of the members were primarily or solely engaged in some business, manufacturing or banking enterprise; and more than one-third of the members apparently derived an important part of their incomes from such activities. This does not count any of the lawyers, at least half of whom had important business, as well as professional interests. Mahlon Dickerson, for example, was a lawyer and owner of the Succasunna

Iron Mines. At least four lawyers were bank presidents, and a number of others were officers or directors in banks and other corporations. One was the Democrat Ogden, treasurer of the Society for Useful Manufactures and officer of a railroad.

The modern age of private corporations was just beginning. Our biographies show that at least 29 of the delegates had some responsible interest, as officer, director, promoter or owner in some business or financial corporation. A number of them were interested in two or more such organizations. The principal corporation connections of which we have record break down as follows: transportation (railroads, canals, turnpikes), 14; banks, 13; insurance, 6; manufacturing, 6; gas lighting, 2; mining, 1. Autobiographical references in the debates indicate that this list is far from complete. Thus more than half of the members of the convention had some experience in the conduct of one or more business or corporate enterprises other than a small farm or country store. We have little direct information concerning the incomes or fortunes of most of the members; but there is every indication that all or most of them were at least "prosperous," and we do know that a number of them were men of means who left sizable fortunes. They probably all owned real estate.

A considerable number of the delegates displayed noteworthy interest in religious, educational and welfare activities, thus indicating their responsiveness to the idealistic and humanitarian trend of the second quarter of the last century. Among those who showed special interest in education were William Allen, David Naar, Richard Field, James Parker and Alexander Cattell. At least 10 of the delegates had attended Princeton University, and others had received undergraduate or professional training at Rutgers, Columbia, Yale, the University of Pennsylvania, and elsewhere.

What is the composite picture of the convention which all these facts produce? On the whole, it looks like a good cross section of the more alert, active and articulate citizens of the State. Most of them were men with decided political inclinations and political experience, in some cases dating back half a century. Just about half of them were members of one or other of two of the principal learned professions, medicine and law, and probably a fair majority were "enterprising" enough to be active participants in and beneficiaries of the beginnings of the financial and industrial revolution which was to transform New Jersey, in little more than a generation, from a small State of native born farmers into a cosmopolitan business and industrial empire.

They were, therefore, not set in provincial antagonism to "progress" in the capitalist sense. But most of the business and professional men had the essentially rustic outlook of those who have lived most of their lives on or close to the soil and who feel that their support comes directly or indirectly from the surrounding land.

Because of the failure of Monmouth County Democrats to observe the political truce in the election of delegates, there were 30 Democrats to 28 Whigs. It would be impossible to distinguish between the representatives of the two parties on the basis of political experience, education, wealth or professional or economic interests. Perhaps the Whigs included slightly more than their share of the successors to the old Federalist "aristocracy," such as it was; but there were old Federalists among the Democrats, and the Whigs were at least as active as the Democrats in such causes as public education.

LINES OF CLEAVAGE

The most significant divisions in the convention had to do with these questions:

(1) Position and powers of the governor.
(2) Composition of the courts.
(3) Composition and terms of the legislature.
(4) Method of amendment.
(5) Limitations on the legislature, especially affecting (a) the chartering of banks and other corporations, (b) taxation, and (c) eminent domain and internal improvements.

A review of some of the roll calls and accompanying debates on these questions will give us a glimpse at the delegates in action and help to show what made them click. A complete profile of the cleavages and blocs in the convention would require a more refined statistical analysis than is possible here; but the main facts can be gleaned by inspection.

These facts can be summarized roughly as follows:

(1) There was a faction favorable to a strong governor opposed by a faction unwilling to build up the governor at the expense of the legislature.

(2) There was a popular faction, inclined to trust the people more than the government, opposed by a faction with an "aristocratic" inclination to trust the people less and the government more.

(3) There was a faction determined to adopt safeguards against an "aristocracy" of irresponsible corporate wealth, opposed by a faction anxious to do nothing to discourage corporate enterprise.

(4) The majority of the Democrats were inclined to favor a strong governor, to trust the people, to protect the agricultural interest and to curb the corporations; while a majority of the Whigs tended to favor the legislature and joint meeting, to put their confidence in especially qualified public officers and to encourage corporations.

(5) But there were Democrats and Whigs on both sides of practically every important question, and few if any delegates were entirely consistent in their voting behavior.

(6) There was a feeble large county faction opposed by a determined small county faction; but there is little if any evidence of sectional voting.

(7) The differences between opposing factions were really neither very wide nor very deep.

(8) Moderation and willingness to compromise were evident in the solution of most problems.

CONTROVERSY AND COMPROMISE

The governorship was the subject of some of the most partisan debate. The veto power especially aroused so much spirit that charges of party voting were exchanged and, as always throughout the convention, indignantly denied. The strong feeling on the subject had been generated by the vetoes of "King Andrew" and "Capt." Tyler, and was let loose in the discussion of a motion by Ryerson to require a two-thirds vote to override a veto instead of the majority vote proposed by the committee. Most of Ryerson's support came from fellow Democrats; but Field, a Whig, spoke very vigorously in favor of the strong veto. Condit, another Whig, tried to effect a compromise on a three-fifths vote to override. This was acceptable to the strong veto men; but enough Democrats joined with a majority of the Whigs to defeat it by a 27 to 27 tie. Ex-Governor Dickerson, a Democrat who was opposed to a strong governor, sagely remarked that the party line-up on the veto was dictated not by any historic principles but by reactions to recent party battles.

The debate on the veto power illustrates the confusion which frequently results from attempts to harmonize inherited theories with political prejudices and current objectives. R. S. Kennedy, Whig, looked upon the veto "as an aristocratic feature which was inserted

in the Constitution [of the United States] when our fathers had a feeling of fear to intrust the people with too much power." Chief Justice Hornblower, another Whig, exclaimed, "It is anti-republican and anti-democratic." Zabriskie and Vroom were equally sure that the veto was essentially democratic: "We desire to protect the people against the reckless action of their representatives." The veto was a weapon by means of which the governor, "the sole representative of the whole State," might prevent laws against "the interests of the whole" from being passed under the influence of corruption or the combined weight of sectional interests. In response to this argument, Mr. Green complained that the "idea of protecting the people is a modern idea to make the principle more palatable." It might be regarded as a modernized version of the outworn argument of John Adams that the veto was needed to curb the appetites of competing aristocratic and democratic elements in the legislature; but the later development of pressure politics gives even more point now than in 1844 to Mr. Vroom's conception of the governor as the representative of the whole against the parts of the State.

The veto, then, was opposed as aristocratic and supported as democratic. It was also both opposed and supported in the name of the separation of powers principle. Field warned, in language reminiscent of Jefferson and *The Federalist*, against the danger of "the tyranny of a majority of the legislature . . . which is perpetually invading the other departments—and in whose hand power is constantly accumulated." The veto was needed, therefore, to protect the position of the executive, the naturally weak member of the governmental trinity. Dr. Schenck on the other hand denounced the veto as working an improper accumulation of legislative and executive power in the hands of one man. It should be noted in evidence of Dr. Schenck's consistency that he later advocated giving the governor the appointing power, as properly belonging to him; but Field's argument has gained force with the years because of the failure of the convention to secure the governor in the possession of the appointing and removal powers constitutionally vested in the president. There can be little doubt that a stronger veto would have helped the governor to carve out a larger sphere for himself as chief administrator and have put him on a more nearly equal footing with the other departments.

It is not surprising that the convention went against the strong veto. No one disputed assertions by several delegates that they "had never heard among all the objections made to the old constitution, any complaint either in public or in private, because of its not containing

this feature." The rare complaint that, partly because "he has not even a partial negative upon the passage of laws," the governor cannot "produce any of those salutary effects which are naturally expected from the monarchical part of the Constitution," would not have found more favor in 1844 than it did in 1809.[158]

The attempt of Mr. Ryerson to eliminate the proposed prohibition against a governor succeeding himself was even more decisively beaten than his attempt to strengthen the veto. This motion was lost 38 to 13. Hornblower, who was generally opposed to a strong governor, was the only Whig who voted with 12 Democrats for the motion; but 17 Democrats voted "Nay." The common fear of the opponents was that a governor might perpetuate himself in office through improper use of the patronage.

One of the most extended debates in the convention was over the appointing power. More than half of the members took part, and a most confusing variety of opinions was expressed. Some held with Field that the appointing power was by nature "an *executive* power—the *great* executive power." Others believed that most appointments had best be made by the people. Some of these, like Naar, deduced that the "next most popular method" was appointment by the governor, while others, like Marsh, concluded that it was appointment by the immediate representatives of the people in the legislature. There were those, like Mr. Allen and Dr. Ewing, who denounced the proposal to transfer appointing power from the legislature to the governor as an anti-republican "remnant of Kingly power." And there was the realistic view of ex-Governor Dickerson that "There is no inherent power in the executive," and that the disposition of the people must determine the proper locus of the appointing power. Finally there were the compromisers, "willing so to distribute the appointing power as to lodge part of it in each of the Departments [the people, the legislature, the governor] for which different eminent gentlemen have expressed a preference. . . . Experience will show which Department will be the safest depository of power."

In such a situation, the compromisers were almost bound to win, and the result was the following distribution of the appointing power:

(1) To the people: the governor, sheriffs, coroners, county clerks, surrogates, justices of the peace.

(2) To joint meeting: the treasurer, keeper and inspectors of the State prison, common pleas judges.

(3) To the governor and senate: the chancellor, supreme court justices, judges of the court of errors and appeals, secretary of state,

attorney general, prosecutors of the pleas, clerks of the supreme court and court of chancery, major generals and "all other officers, whose appointments are not otherwise provided for by law."

(4) To the governor alone: "adjutant general, quartermaster general and all other militia officers, whose appointment is not otherwise provided for in this constitution."

A few of the roll calls will indicate the relative strength of the various attitudes:

A motion to give the appointment of the chancellor, supreme court justices and lay judges of the court of errors and appeals to joint meeting rather than to the governor and senate was defeated by 34 (25 Democrats and 9 Whigs) to 21 (4 Democrats and 17 Whigs).

A similar motion to return the appointment of the attorney general, county prosecutors, clerks of the court of chancery and supreme court, and the secretary of state to joint meeting was defeated by 34 (22 Democrats and 12 Whigs) to 18 (7 Democrats and 11 Whigs).

A motion, which might have had serious results if passed, to provide that joint meeting might fill any vacancy resulting from failure of the senate to confirm a governor's nominee within 10 days was defeated by 39 (27 Democrats and 12 Whigs) to 15 (2 Democrats and 13 Whigs).

It is important to note that two of the strongest advocates of joint meeting were Democrats Ewing and Dickerson, while such Whig leaders as Browning, Field, R. S. Kennedy, and Williamson were among the most uncompromising foes of joint meeting appointments. It is therefore not strange that on the "compromise" motion which restored the appointment of several score of common pleas judges to joint meeting the party line-up was as follows: Yea—33 (11 Whigs and 22 Democrats), Nay—18 (12 Whigs and 6 Democrats). In view of the record and of the argument that the great evil of joint meeting appointments lay in logrolling and "its reflex influence on legislation" this was, as Green and others pointed out, quite illogical and indefensible on any ground except sheer political expediency. Ogden, Democrat, advocated it as an "experiment" to test the relative merits of different appointing authorities. Apparently the experiment was not favorable to joint meeting, because in 1875 the constitution was amended to give the appointment of these judges and of the keeper of the prison to the governor and senate, a change only slightly compensated for by creating the new office of comptroller, to be filled by joint meeting.

Governor Robert S. Green, who had been a member of the 1873 Commission which drafted the 1875 amendments, explained in his Annual Message of January 8, 1889, that the transfer of the appointment of common pleas judges and keeper of the state prison from joint meeting to the governor had been demanded because of the "notorious" evils attendant upon the old method.

Certain votes in the convention indicated the difference in the central tendencies of the party attitudes on popular elections. A motion by Jaques for popular election of common pleas judges was defeated by 10 (9 Democrats and 1 Whig, Marsh) to 45 (20 Democrats and 25 Whigs). The predilection of the Democrats for direct and of the Whigs for indirect democracy was more clearly indicated by the defeat of the motion to return appointment of justices of the peace from the people to the legislature by 13 (1 Democrat and 12 Whigs) to 40 (28 Democrats and 12 Whigs). Another indication was the vote on a motion to have surrogates appointed by the ordinary instead of by the people, defeated by 17 (2 Democrats and 15 Whigs) to 36 (27 Democrats and 9 Whigs).

We can now assess the work of the convention in disposing of the appointing power.

(1) It is clear that the convention did not as a body regard the power of appointing officers as one "properly belonging" to any one of the three departments of government. As Justice Dixon wrote in a 1903 opinion, "in our system there appears no indication that any single department of government can be deemed the king's successor" as "the fountain of honor, of office, and of privilege."[154]

(2) A substantial majority of the delegates were by theory and/or experience predisposed against continuing extensive appointing power in joint meeting.

(3) The greatest objection to joint meeting appointments was their adverse effect on the election and behavior of the legislators.

(4) The most effective blow at legislative patronage was the transfer of the election of the numerous county officers and justices of the peace to the people.

(5) The transfer of the appointment of higher judges to the governor was dictated as much by distaste for both legislative and popular election of such officers as by any feeling that it naturally belonged to the executive.

(6) The convention believed that it had pretty nearly disposed of the practice of legislative patronage. It failed to foresee all the possibilities in senatorial courtesy and in the creating of new offices to be filled by joint meeting.

(7) The convention had no conception of the governor as a responsible chief administrator, although a few remarks by leading members indicated a glimmer of such a notion. There was apparently no intention to empower the governor to hire and fire his chief assistants, since all his constitutional appointees were to enjoy terms longer than his own.

The last point is important, because it touches one of the most serious failures of the convention to anticipate future developments. Furthermore, its exploration, in the light of the history of this and other states prior to the middle of the last century, will help explain the general failure to find a satisfactory place for the governor in the separation of powers system.

The non-legislative and non-judicial duties of the governor under the constitution of 1776 had been slight. The independence of other state officers elected by the legislature was only a secondary reason for this. More important was the fact that the state government seemed to have very little *non-judicial* executive business to do. There were at least four reasons for this. In the first place, ordinary law enforcement and such state concerns as assessment and collection of taxes and the conduct of elections devolved then as they do today primarily on county and municipal officers. In the second place, the judges absorbed some administrative functions and undertook much of the supervision of local functionaries which in France, for example, would have been exercised by a central executive. In the third place, the great functions of the executive in a national state—the conduct of foreign affairs and the command of the army and navy—were necessarily pre-empted in our system by the president. And finally, the state had not yet acquired the extensive regulatory and service functions which it has today.

De Tocqueville, writing only a few years before our convention, noticed the absence of central administration in American states and diagnosed the causes with remarkable clarity. He asserted that "Nothing is more striking to a European traveler in the United States than the absence of what we term government, or the administration. Written laws exist in America, and one sees that they are daily executed; but although everything is in motion, the hand which gives the impulse to the social machine can nowhere be discovered."[155] This paradox, De Tocqueville attributed to the decentralization and distribution of administration among "almost as many independent functionaries as there are functions," so that "the executive power is disseminated in a multitude of hands," most of them elected local officers.[156] "The state usually employs the officers of the township or

county, to deal with the citizen. Thus, for instance, in New England the assessor fixes the rate of taxes; the collector receives them; the town treasurer transmits the amount to the public treasury. . . ."[157]

The following newspaper report of a Salem, New Jersey, town meeting in 1840 translates De Tocqueville's generalization in terms of our own practice:

"The Town Meeting in this township on Tuesday afternoon last, was the most animated . . . within the memory of the oldest citizens (why?). We are sorry to say tumult and disorder occurred several times, during the progress of the proceedings. . . . Party lines were strictly drawn for some offices, and the parties so nearly balanced that in two instances *one* vote decided the question. . . . Out of 28 officers elected 17 are Whigs and 11 Van Buren.

[A list of the offices filled follows—Moderator, Town Clerk, Assessor, Collector, Commissioners of Appeals (3), Chosen Freeholders (2), Surveyors of the Highways (2), Overseers of the Poor (2), Pound Keeper, Constables (2), Overseers of the Highways (3), Judge of Election, Township Committee (5), School Committee (3).]

"The meeting assessed $150 for paving the sidewalks; $150 for mending the streets; $100 each was voted the two fire companies of the town; $100 for repairing and putting in pumps. The surplus loan committee reported a balance on hand and more in expectancy amounting . . . to near $800, all of which was appropriated for school purposes; and the township raised only one dollar to be added thereto. The dog tax for the ensuing year was fixed at one dollar per head."[158]

In spite of the theoretical sovereignty of the state, it was in dozens of town meetings like this that the real governing power of the people of New Jersey found its most significant expression. Effective *administrative* supervision by the state of the work of such spirited citizen bodies and of the multitude of agents chosen by them every year would have been out of the question. Declaring that "The right of directing a civil officer presupposes that of cashiering him if he does not obey orders, and of rewarding him by promotion if he fulfils his duty with propriety," De Tocqueville pointed out that such administrative rewards and punishments were not applicable to *elected* officers with *fixed terms*. Hence, the need, "not evident at first sight," for "the extension of judicial power . . . in the exact ratio of the extension of elective offices. . . ."[159]

De Tocqueville concluded that anarchy was avoided, despite the lack of anything "either central or hierarchical" in the constitution of the administrative power, by "the great use of judicial penalties as a means of administration."[160] He described the administrative activities of the judges themselves, explained the amenability of local officers to the courts for the honest performance of their legal duties and exclaimed, "Thus it is that in the United States the authority of the government is mysteriously concealed under the forms of a judicial sentence; and the influence is at the same time fortified by that irresistible power with which men have invested the formalities of law."[161]

In New Jersey both the justices of the peace and the higher judges actually performed some ministerial duties which might equally well have been assigned to strictly administrative officers. As in England, all public officers were answerable to the ordinary courts for their conduct, while the Supreme Court through the prerogative writs has always acted "for the redress or prevention of public wrongs by public bodies and officers, whose official sphere is confined to some political division of the state. . . ."[162] Thus "A superintendency is exercised over many affairs in which the people, not of a particular locality but of the state at large, have an interest; for it is by this means that the public finances, the militia system, the exercise of the right of suffrage, and other matters of similar political importance are regulated and protected."[163]

De Tocqueville admitted that the subdivision of administration sometimes resulted in indifferent or negligent performance of public functions, irritating to a European. He thought more state responsibility would be desirable, but found the existing system fairly satisfactory. He attributed its rise and continuance partly to natural conditions making for "an indestructible element" of local independence (particulary in the New England township, which New Jersey had imported at an early date) and partly to the intention of the Americans "that the office might be powerful and the officer insignificant, and that the community should be at once regulated and free."[164]

Concerning the not so powerful governor, in the necessarily limited sphere of state administration, De Tocqueville wrote:

"In the states the executive power is vested in the hands of a magistrate, who is apparently placed upon a level with the legislature, but who is in reality nothing more than the blind agent and the passive instrument of its decisions. He can derive no influence from the duration of his functions, which terminate with the revolving year, or from the exercise of prerogative which can scarcely be said to exist. The legislature can condemn him to inaction by intrusting the execution of the laws to special committees of its own members, and can annul his temporary dignity by depriving him of his salary."[165]

In contrast, De Tocqueville noted as one of the reasons for the superiority of the United States Constitution the fact that it "vests all the privileges and all the responsibility of the executive power in a single individual," who enjoys a four year term at an assured salary, and is "protected by a body of official dependents, and armed with a suspensive veto." De Tocqueville declared that in consequence of this and other differences, the business of the Union is incomparably better conducted that that of any individual state."[166] Furthermore, he recognized that "It is chiefly in its foreign relations that the executive power of a nation is called upon to exert its skill and vigor."[167] This fact plus the lack of any standing army at the disposal of a state government would necessarily tend greatly to reduce the need for unity or strength in the state executive.

Even the state militia was essentially a local institution, and the governor's title of "captain general and commander in chief" conveyed a duty with little power. Higher officers were appointed by the legislature, while captains and other inferior officers were appointed by the companies in the respective counties. And local companies might be called out by their officers on request of the civil authorities without the intervention of the governor.

There was therefore no necessity to develop a clear concept or an efficient plan of state administration. The governor as executive was just a convenience occasionally employed by the legislature to carry out a mandate which it did not see fit to direct to some other officer or body. The following list of such mandates to the governor of New Jersey, culled from Paterson's *Laws* (1800) and Elmers' *Digest* (1838), gives a fair indication of the "executive" business of the governor: (a) on advice of governor of New York or Pennsylvania to proclaim presence of contagious disease on ship in common waters and put citizens on notice not to go aboard on pain of fine; (b) on application of aggrieved person to order suit on sheriff's bond; (c) to subscribe to 100 shares of stock in the Society for Establishing Useful Manufactures; (d) on recommendation of five inspectors and certificate of physician to remit costs of prosecution due from criminal in state prison; (e) to appoint notaries public; (f) to purchase 13 pieces of brass field artillery, 7 six-pounders, and 6 three- or four-pounders and deliver same to commanders of militia brigades; (g) to grant peddlers' licenses on recommendation of court of common pleas; (h) to appoint inspectors of flour and meal for certain cities and in each county, to hold office at pleasure of governor and to enforce a code of regulations; (i) on application or recommendation of common council of any city or town or on application of twelve respectable freeholders of any town, to appoint or commission one or more inspectors and repackers of herring, for 5-year terms; (j) on application or recommendation of local governing body to commission one or more inspectors and repackers of beef and pork to enforce code set forth in the statute; (k) to transmit to executive of each state and territory three copies of the public laws passed during each session; (l) to sign warrant for compensation of supreme court justice holding circuit, oyer and terminer or general gaol delivery; (m) to receive and transmit tickets of candidates nominated for electoral college and congress, with council to canvass votes for electors; (n) to serve with vice-president of council, speaker of assembly, attorney general, and secretary of state as trustee for the management of the free school fund; (o) to pass on applications and allot money, not otherwise appropriated, for instruction of indigent deaf, dumb or blind persons; (p) with council, to appoint annually seven commissioners of pilotage who were empowered to examine pilots, make rules and regulations governing them, and prescribe fines and penalties; governor to administer oath to and sign licenses for pilots certified by the commission and bonded by the treasurer.[168]

It should be observed that these laws were not all in effect at any one time, and that in most cases they reposed in the governor a very limited agency or responsibility, contingent on the advice or act of another body or shared with others named in the act. Moreover, the legislature during the same period was imposing similar responsibilities on the courts. For example, an act of February 24, 1797,[169] created a licensing system for the regulation of inns and taverns, to be administered by courts of quarter sessions, i.e. by justices of the peace. Similarly, an act of March 3, 1820, authorized judges of courts of common pleas to appoint commissioners of wrecks. A still earlier law of November 26, 1783,[170] had provided that no person might practice physic or surgery until he had been examined and certified by a board consisting of any two supreme court justices assisted for the examination by two able practitioners selected by them.

In short, the constitution of 1776 and the laws enacted under it actually gave the governor practically no executive power. Griffith, writing more than thirty years before De Tocqueville, had pointed out that "the *executive* is *nominally* in another body, yet *substantially* resides in the *legislature*" which appointed and could in effect displace executive officers *"at its pleasure,* either by dismissal, election of others, or depriving them of compensation. . . ."[171] The one constitu-

tional prerogative of an executive nature which the governor seems to have had was the power to fill vacancies, not otherwise provided for by law, during the recess of the legislature. Chief Justice Kirkpatrick held that this was implied in the grant of "the supreme executive power" and that consequently the governor could fill temporarily a vacancy in the office of clerk of the court of common pleas, which under the constitution would be filled by joint meeting when the legislature was in session.[172] Obviously, this power could be of little value to the governor. As for the powers and duties imposed on him by the legislature, they were not of such kind and amount as to make a great office, and they were held on sufferance: first, because the governor might be retired by joint meeting at the end of the year, and second, because the legislature might take any such responsibility from the governor and give it to a court or to another officer appointed or designated by itself.

As a matter of fact, had the governor been given the whole management of the business of the State, it would not have been a big financial responsibility even for those days. In 1840, the State is reported to have spent, exclusive of expenditures from departmental receipts, $98,083.68.[173] Actually, the governor had little or nothing to do with the spending of most of this sum. Legislative expense accounted for $18,869.75, and State officers' salaries for $12,720.00. The State school fund amounted to $319,802.16, and the trustees of the fund distributed $30,000, or almost one-third of the State disbursements for the year. The largest single State enterprise was the prison, which spent $12,416.30, in addition to the proceeds of prison labor. The prison, however, like all the other State departments was run by persons elected by and responsible to the legislature. The treasurer, who collected, handled and accounted for State revenues and funds, was more important to the general administration of State business than the governor, of whom he was constitutionally independent.

If state government was little business 100 years ago, it is big business today. Its disbursements have multiplied more than a thousandfold. When we think of a modern state government we naturally think first of state administration, exercised by scores of departments. Not so in 1844. Then one thought first of the legislature as dispenser of many offices and privileges and a few general laws and of the courts as the visible daily representatives of state authority. The short list of state offices considered important enough to put in the constitution of 1844, compared with the long list of state offices in the current *Legislative Manual* tells the story. The present annual maintenance of

High Point State Park costs the people about the same number of dollars as the whole state government in 1840!

The combination of circumstances which made it unnecessary even to think about a real state executive in 1844 has therefore been greatly altered by the spectacular growth of state functions; but the constitutional and ideological weakness of the governorship has lingered on. The naturally jealous legislature has usually made new administrative officers and boards independent of the governor in the manner of terms of their appointments, although it has grudgingly given the governor *some* of the tools of budgetary and fiscal management. Constitutional and political restraints have, despite considerable agitation, kept New Jersey from going as far as some of the other states in transforming the old ceremonial, political, and judicial governor into a modern "general manager" or "administrative chief."[174] It is a curious fact that we have had to wait for these latter days of lament over "the vanishing rights of the states" for the business of state government to become important enough to create a demand for a chief state executive office which makes sense in terms of the separation of powers theory. The industrial revolution has thus stimulated a revival and nationalization of a theory which developed when agriculture was king and commerce was "its handmaid." An instance of this modern trend of thought is a plan of administrative reorganization for New Jersey designed so that "the Governor will be placed in the position contemplated by Article V, section 1, of the Constitution; that is, he will become in fact as well as in theory the chief executive of the State."[175] In plain truth, the makers of the 1844 constitution could have entertained no such "theory" of the governor as chief executive, because they did not foresee any need for such an officer. As far as they were concerned, the governorship was necessary to give the state a ceremonial head, to complete the formal balance of three powers, and to provide a more responsible agency than the legislature for the appointment of the higher judges and a few unimportant state officers. That was all. Consequently, Chief Justice Hornblower feared that the governorship would "not be of sufficient importance to make it desirable for the best man to accept it," and Mr. Clark felt sure that the office would "not be worth the acceptance" of a good practising lawyer. They therefore hoped for the best—that the governor might be a "plain honest farmer," or at least a "plain sound man."

But if the constitution makers did not expect the governor to be a great executive officer, neither did they expect that many important state administrators would be made in the legislature, either by joint

meeting or by senatorial courtesy. They simply did not anticipate the growth of state administration and therefore laid down no plan for it.

There seems to have been no doubt in the minds of the delegates about their mandate to separate the offices of governor and chancellor, and to provide for the popular election of the governor. In fact several spoke of this as the one clear instruction to the convention. We have already noted the decisions concerning the appointment of judges; but there were a number of other issues connected with the judiciary which will throw light on the temper of the convention.

Mr. Ogden claimed that popular interest in reform of the court of appeals was second only to that in separation of governor and chancellor, and there was little dissent from the view that some reform was in order. On the whole, the delegates seem to have been quite proud of the court of errors and appeals which they fashioned in response to this interest. Mr. Ogden declared that in his "humble opinion, New Jersey will have the best court in the last resort that will exist in the Union." Chairman Van Arsdale, of the committee on the judiciary, and Chief Justice Hornblower were almost equally laudatory of their unique brain-child. The great thing about the court to these lawyers was its combination of the highest legal talent in the state government (the chancellor and supreme court justices) with "a sufficient number of laymen, who are to be selected from the body of the people, for their integrity, their experience, and their plain, practical, sterling common sense," to quote Mr. Ogden again. The chief justice anticipated with satisfaction that the lay judges would be selected from among "our farmers, mechanics and merchants,—men of intelligence, experience and character."

The one fear which bothered a number of the delegates was that the "lay" judges might often prove to be lawyers. The youthful lawyer Ryerson, therefore moved to eliminate the supreme court justices, in hope of keeping the professional part of the court as small as possible. This motion was defeated by 35 (24 Whigs and 11 Democrats) to 18 (16 Democrats and 2 Whigs, Westervelt and Parker). Ryerson, who was the only lawyer who voted for this motion, explained that he did not "wish to see the rights of individuals placed in a tribunal half made up of gentlemen of the legal profession . . . too apt to be prejudiced by technicalities instead of reason and law." A motion by Parker to conform the court to the existing New York model by substituting the elected senators for the appointed lay judges was then defeated by 43 to 11 (10 Democrats and 1 Whig). Looking back, the remarkable thing about the debate on the court of errors and appeals

was the practically unanimous opinion that a court of last resort should not be composed entirely of lawyers. In this connection, one should remember that about one-fourth of the delegates had been lay judges, either as members of council or as inferior judges, or both. More important, probably, was the lively sense of the political and moral importance of the judicial function and the feeling that the constant practice of legal technicalities tended to blunt the natural common sense and dull the social perception of a man. Laymen and lawyers alike seemed to fear the tendency of lawyers, noted by De Tocqueville, to "direct all their attention to the letter, seeming inclined to infringe the rules of common sense and of humanity, rather than to swerve one little from the law."[176]

On the terms of judges the convention followed the path of least resistance by giving the supreme court justices and the chancellor the seven-year terms set in the old constitution for the supreme court, and by retaining the five-year terms for common pleas judges. A motion to give life tenure to the chancellor and supreme court justices received only 12 favorable votes, all of them Whig, against 39 (12 Whig and 27 Democrat). Another motion to extend the term to ten years was also lost by 37 (26 Democrats, 11 Whigs) to 16 (15 Whigs, 1 Democrat). On the other hand a motion to reduce the term to five years received the favorable votes of only Jaques and Naar.

The essentially conservative temper of the convention is shown by its failure to go for popular election of judges. We have noted that a proposal for such election of common pleas judges mustered only 10 favorable votes. Mr. Field did predict that if appointment of judges was not transferred from joint meeting to the governor and senate, it would soon be given to the people. Perhaps if the convention had been called a little later, New Jersey would not have resisted the trend to election of judges which started in Mississippi in 1832, spread throughout the West, and was written into the New York constitution of 1846 and into the Pennsylvania and Virginia constitutions in 1850.[177]

The debates and votes on motions affecting the election and composition of the legislature give further evidence of the modest scope of the reforms contemplated by most of the delegates. They also illustrate the tendency of the Democrats to furnish more than their share of the votes on the "popular" side of controversial issues. For example, the Democrats showed somewhat more attachment than the Whigs to annual elections. Thus, a motion to retain one-year terms for senators, in place of the proposed three-year terms, was defeated,

30 to 22. The Democrats furnished 17 of the minority; but they als
furnished 12 of the majority, including the votes of such leaders
Vroom, Wurts, Zabriskie, J. R. Thomson, and Ryerson. Interestingl
enough, Mr. Vroom argued most strongly for the longer term on th
ground that it would give the upper house more stability and make
a needed check on the popular lower house. Mr. Vroom thought thi
"a matter of commanding importance," particularly in view both of th
participation of the senate in appointing power and of the failure
give the governor "the conservative power" of the veto. Vroom wa
joined in this argument, reminiscent of John Adams's old idea of th
upper house as a refuge for the aristocracy, by the Whig, Clark. M
Clark declared that "It was the design and desire of the committee t
place a different class of men in the upper house." He felt sure that th
extended term would invest the office of senator "with a dignity, an
solemnity, an impressiveness," and that senators would be "represe
tatives of the patriotism, and not of the partisans of the state."

The party line-up on biennial sessions for the legislature was als
confused, although here again the majority of the Democrats showe
their distaste for extension of tenure. The Whigs divided about even
on the issue; but the Democrats voted 19 to 9 against the two-ye
term.

One of the most striking party line-ups was on a motion to ho
state and national elections at the same time. The Democrats argue
against the plan on the ground that state elections should not be sub
jected to the unhealthy heat of national elections. This motion was lo
by a vote of 26 Democrats and 2 Whigs against 21 Whigs. If the
was party expediency in this vote; there was also, judging from th
debate, sincere conviction.

On a number of motions which were defeated by large majorities
the minority consisted entirely of members of one party. When th
minority was Democratic it would usually be supporting a positio
considered favorable to "the people" as against special privilege o
interest. When the minority was Whig, it was usually defending
"conservative" position, or one favorable to a property or busines
interest. Two votes on the qualifications of elected officers will illustra
these "extremes." A motion by Naar to make all qualified voter
eligible to all elective offices under the constitution was defeated b
38 to 11. The eleven "yeas" were by Democrats, while the "nays
were furnished by 15 Democrats and 23 Whigs. This motion ha
followed one by Parker to require that senators be freeholders, whic
had been lost by 43 Democrats and Whigs to 4 Whigs.

A more striking illustration of Whig conservatism was afforded by the vote on a motion to require that a successful constitutional amendment must receive at a special election an affirmative vote equal to a majority of those voting at the preceding gubernatorial election. This requirement, which would have imposed an almost insuperable obstacle against any constitutional amendment, received the affirmative vote of 19 Whigs against a negative vote of 6 Whigs and 29 Democrats.

The central figures in the nucleus of determined Democrats were David Naar, true Jeffersonian in his versatility of mind and his uncompromising belief in the individual man; and Moses Jaques, 73-year old philosopher, physician, farmer and merchant, who could appeal to history, literature, or common experience to support his opposition to banks, corporations, vested interests, and the common law.

Actually, the extreme Democrats and extreme Whigs (if there could be an "extreme *Whig*") were not so far apart as we might suppose. The comparative ease with which within six weeks the delegates agreed upon what most of them considered a very satisfactory constitution is evidence enough of this fact. Moreover, very few of the delegates were consistently on one side or the other of an imaginary line between "right" and "left." The Whig landowner Parker, for example, offered the "popular" motion to include the elected senate in the court of errors and appeals, and the "aristocratic" motion to require that senators be freeholders. Most votes seem to have been dictated by specific considerations applicable to the matter at hand rather than by general principles or a single controlling attachment or interest.

The urban laboring class had not yet become large enough to affect the calculations of the convention seriously, although it did figure somewhat in the debates on the amending article and on representation. Nothing better illustrates the essentially "rustic" character of the convention than these debates, which cut right across party lines. Mr. Browning, railroad lawyer and Whig delegate from the new small county of Camden, supported a two-thirds requirement for the submission of amendments, arguing that: "The majority ought not always to govern; they might be collected in large cities and might seek to advance some interest peculiar to themselves at the sacrifice of the agricultural or other interests." Mr. Allen, Whig delegate of the third largest county, Burlington, declared that both houses of the legislature should not be based on population. He argued that the population of a manufacturing district differs from that of an agri-

cultural district: "The one was floating, having no permanent interest in the prosperity of the state and its institutions—the other closely wedded to them. . . ." Democrats Stokes of Burlington and Vroom of Somerset expressed the principal fear of the men who felt that the small counties needed protection against the numbers in the large counties. It was the fear of "excessive taxes." Mr. Vroom pointed out that "It is the landed interest which supports the government," and asked "ought it not to have some influence in carrying it on?" Mr. Vroom was talking about the $20,000 or $30,000 raised from property each year to help support the state government. Asserting that Somerset was perhaps the most purely agricultural county, he showed that it paid an annual tax of $2,500 and had three representatives, whereas Essex, with seven assemblymen, paid only $1,000 more.

The final vote on a proposal to compose the senate of from 15 to 21 members to be elected from five equal districts shows, however, that this potentially explosive question was not decided on the basis of any single line of cleavage either of interest or of principle. Equal county representation was preserved by the decisive vote of 37 to 15. The rural county of Monmouth, second largest in the state, gave reform of the senate all of its 5 Democratic votes. Essex, most highly urbanized county, gave reform 1 Democratic and 4 Whig votes; but 1 Essex Democrat and 1 Whig voted for the *status quo*. The other five votes for reform came from five counties: 1 Whig from Sussex, and 1 Democrat each from Burlington, Hunterdon, Middlesex and Warren. Burlington, Hunterdon and Middlesex were among the larger counties, and Warren and Sussex were of medium size for those days. Mr. Condit, Whig, of Essex felt so badly about this defeat that he became the one member of the convention who could not bring himself to give his vote to the finished document. But, as one writer seventy years later explained, most of the large county men were not insistent on reform: "The subject was not of such large importance in that time because none of the counties was over-large; they were a family of little communities."[178]

There was, in addition to the wavering divisions on lines of party interest and political principle, and the nascent division between large and small counties, some significant division over the proper attitude toward property, corporations and financial institutions. The record of debates and votes on this subject is confusing. Many delegates were obviously far from clear about how to write their objectives into the constitution.

After much backing and filling, the only restriction put upon the granting of corporate charters required a three-fifths vote in each house on "charters for banks or money corporations" and limited such charters to 20-year terms. This was despite the fact that at various times more severe curbs, applying to corporations in general, had been tentatively approved. Throughout the debating and voting on this subject it was evident that the Democrats, as a group, were definitely more suspicious than the Whigs of the ways of corporations. The votes on two propositions, neither one of which lived to find its way into the finished document, will illustrate how the parties lined up. On a motion to require the assent of more than a bare majority of the legislature to create, continue, or renew private corporations (with certain exceptions), 26 Democrats and 4 Whigs voted "aye," while 14 Whigs and 3 Democrats voted "nay." Similarly, 24 Democrats and 1 Whig voted for and 13 Whigs and 4 Democrats voted against a motion providing that bank charters be subject to modification or repeal by the legislature.

The difference between the parties should not be exaggerated, however. A motion by Jaques to make the presidents and directors of banks individually liable for the debts of their banks "to the amount of their estates, and the stockholders to double the amount of stock held by them respectively," commanded the support of only 8 Democrats against 38 Whigs and Democrats. This vote probably gives a fair indication of the extent of the most extreme anti-bank bias in the convention. On the other hand there was a nucleus of Whigs who were against any special restrictions on the power of the legislature with respect to corporate charters. Schenck, Hornblower, R. S. Kennedy, Allen, Browning and Field all denounced the requirement of special majorities as undemocratic—"a violation of the great fundamental principle that a majority should govern."

Mr. Vroom was equally sure that democracy required a curb on corporate wealth: "If there is any danger to be feared in a republican Government, it is the danger of associated wealth, with special privileges, and without personal liability. It is the aristocracy of wealth we have to fear. . . ." Doubtless Mr. Vroom was thinking of the Joint Companies (Delaware and Raritan Canal and Camden and Amboy Railroad) whose grip on both the state and the Democratic party he had fought.[179] But Mr. Vroom was no indiscriminate enemy of corporate enterprise. His tribute to benefits to be derived from "private incorporated companies" quoted earlier in this Introduction from one of his opinions as chancellor proves this.

Fortunately, as Dr. E. E. Agger has pointed out, New Jersey was not caught "so badly as were some of the other states" in the national "speculative boom in internal improvements, in new business, . . . and in land operations" in the '20's and early '30's. The state legislature had prudently hedged against the impending crash, with the result that looking back on the panics of 1837 and 1839 Governor Pennington was able to say in his message of October 26, 1841: "Considering the times through which we have passed, the banks in no state of the Union have sustained themselves better than those of New Jersey."[180]

Consequently, the urge to curb corporations was weaker than it might have been and it was further restrained by the desire of most of the members of the convention not to deprive New Jersey of possible benefits from investment of capital. The delegates could not forget that revenues from the banks and transportation companies largely supported the state government and the school fund. In fact it was commonly hoped that these revenues would soon make the state property tax unnecessary. Moreover, the whole policy of the state toward the railroads, prodigal as it was of special privileges, had enriched the treasury without the creation of a state debt or the pledging of the state's credit.[181]

The dual or multiple occupational roles of many delegates were illustrated in Mr. Allen, Whig farmer, banker, and educator, from Burlington County. He resented Mr. Vroom's reference to an aristocracy of wealth, declaring, "I belong to no aristocracy. I have been not a professional, but a laboring man all my life. . . . These banks," continued bank president Allen, "are the weakest corporations we have, instead of the strongest." Mr. Allen argued that "although our state was agricultural, it had to depend for its prosperity very much upon its mechanics and manufactures—and he was sorry to see these restrictions in the constitution against the legislature granting them proper facilities." In fact, Mr. Allen would prefer to continue under the old constitution "than under one which by preventing these facilities, would be doing essential injury to the interests of the state."

It is necessary to read these remarks of banker Allen in the light of earlier remarks of farmer Allen in support of equal representation of counties in the senate. In that connection Mr. Allen had pointed out that "The manufacturing interests in objects of legislation was [sic] adverse to the agricultural interests. The former want acts of incorporation for banks, and they want a thousand privileges for their own benefit, and the effect is to throw all the burthen on the agricultural interests. This ought to have a check on the constant demands for

these privileges, and if this had not been so, New Jersey might now have been situated similarly to Pennsylvania."

Apparently no serious consideration was given to the propriety of relieving the legislature of the whole burden and temptation of passing special acts concerning corporation charters. This was finally done by amendment in 1875, after a considerable number of states had led the way.[182]

The clear determination of the convention not to stand in the way of economic progress was illustrated again by action on a proposal by one of its few simon pure farmers, Mr. Pickel of Hunterdon County, who urged a provision that "every taxable inhabitant . . . be taxed according to the value of his property, whether real or personal," provided that the legislature shall also "have power to tax special privileges, in such manner as they may from time to time direct." Mr. Pickel urged the clause because under the existing tax system "the great burthen fell upon the agricultural portion of the community." Mr. Child of Morris County, who was listed as a farmer, but who obviously had important business interests, reminded Mr. Pickel that his proposal had been rejected in committee of the whole after full discussion, "on the ground of expediency, that it would drive the domestic capital from the State, whereas they needed the aid of its own as well as foreign capital." Mr. Child continued by asking "if the legislature saw that good would arise by exempting manufactures from taxation, should they not have the power of doing so?"

After loading Mr. Pickel's motion with an amendment by Mr. Stokes to provide that "the legislature should have the power also to tax *salaries, professions, and trades*," the convention rejected the entire clause by a vote of 30 (20 Whigs, 10 Democrats) to 15 (14 Democrats, 1 Whig). This vote indicates that on the whole the Democrats were more solicitous for the agricultural or landed interest than were the Whigs. Another vote which points in the same direction was on the adoption of the section providing that "individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners." This provision, which was intended to protect the landowner against a railroad or other corporation endowed with the right of eminent domain, was, according to the recorded vote, adopted by 43 (29 Democrats, 14 Whigs) against 8 (all Whigs).[183] But it should not be forgotten that the Democratic party was usually the chosen instrument of the managers of the Joint Companies in their struggle to keep the state safe for Camden and Amboy.[184]

It has been suggested that the Joint Companies were interested in a new constitution in order so to restrict the borrowing power of the state as to keep the state from exercising its option "to purchase the works of the companies at the end of a certain number of years."[185] Although the debt limit as adopted came to be "widely regarded as . . . rendering impracticable the exercise of these rights of purchase," there is no indication in the debates and votes in convention that it was put over by or for those interested in the Joint Companies.[186] The committee which first recommended the debt limit in a more extreme form than that in which it was adopted was headed by the anti-monopolist Democrat, Vroom, and was certainly not loaded in favor of the Joint Companies.

It is true that Mr. Browning, an inveterate opponent of the monopoly, did see in the proposed limitations on borrowing an insuperable obstacle to the purchase of the works; but Mr. Vroom and other equally strong opponents of the Joint Companies objected to Mr. Browning's plan to except the purchase of the works from the operation of the debt limit. There was a general distaste for anything like either public operation of the works or state speculation in transportation properties, which was quite consistent with New Jersey's history of extreme prudence in state finance. On the other hand, John R. Thomson, secretary, and Richard Field, director, of the Joint Companies voted to extend the period required to pay off a debt from 20 to 35 years, thus materially relaxing the stringency of the debt limit, while Vroom voted against the extension, and Stratton, "anti-monopoly" Whig opponent of Thomson in the 1844 election, even moved to reduce the period to 10 years. Finally, the original form of the debt limit was still further liberalized, without a record vote, by eliminating the requirement that a law authorizing a debt necessarily include provision "for a direct annual tax," an unpopular device bound to react against a favorable vote on referendum.

7. THE CONSTITUTION OF 1844

What were the sources of the new constitution which the people of New Jersey ratified August 13, 1844? The debates themselves furnish much of the answer to this question. Obviously, the most important source was the constitution of 1776. A careful comparison of New Jersey's first state constitution in the light of history with its present constitution in the light of the convention debates reveals a greater similarity between the two than one might suppose existed.

The new legislature is essentially a replica of the old, the only important differences being the 3-year terms for members of the upper house and a requirement designed to enforce the intention of the first constitution that members of the assembly should be apportioned among the counties according to population. Despite the creation of the independent governor, the new constitution leaves to the legislature much of its predecessor's control over the administration—more, probably, than the members of the convention realized.

The divorce between the governor and the upper house, on the one hand, and the judiciary on the other, left the structure of New Jersey courts substantially as it had been for generations. We have already seen how determined the convention was to insure that the state's highest court should continue to be composed at least partly of laymen. The six lay judges in the court of errors and appeals, therefore, may be regarded as successors to the councillors in that tribunal. The splitting up of the old chief magistracy into the two separate offices of governor and chancellor was the easiest possible response to the pressure of increasing judicial business. The result of the simple bifurcation of the old office was to preserve intact the independent New Jersey court of equity and to keep it in the hands of one man. In fact it has been held that no matter how much the business of the court of equity may increase and how many aides the chancellor may require, he is still the court and his aides must be appointed by him.[187] It should also be observed that the chancellor continues to be the ordinary or surrogate general.

The continuity between the old constitution and the new is amusingly illustrated by the court of pardons which used to consist of the governor-chancellor and the council. It now consists of the governor *and* the chancellor together with the lay judges, as successors to the councillors. The old governor, having been split in two for executive and judicial purposes, is therefore brought together again in the hybrid "court" or board of pardons.

The real proof of the continued vitality of the constitution of 1776 in the constitution of 1844 is to be found, however, not so much in the wording of the two documents as in the working systems which they have sanctioned. Literally, then, a second source of the constitution of 1844 was existing New Jersey law and custom which had continued or grown up under the old constitution. Prevailing statute law contributed much of the judiciary article as well as the provision for election of militia officers and for legislative appointment of the keeper and inspectors of the state prison. Statute and judge made law

contributed many of the principles written into the bill of rights, including the prohibition against imprisonment for debt. The suffrage article of the new constitution confirmed customs of the working constitution at the expense of the letter of the old written constitution.

Some of the changes made in 1844 were not complete innovations. They represented rather decisions to rely more or less heavily on some device tested under the existing constitution. An example of such a shift was the transfer of the appointment of some county officers from the legislature to the people. Even the grant of appointing power to the governor did not introduce a practice completely novel to the state, because the governor had been given some slight appointing power by statute before 1844.

For one provision in the new constitution the convention reached back over the constitution of 1776 to Queen Anne's Instructions to Lord Cornbury. This is the provision that "every law shall embrace but one object and that shall be expressed in the title."[188]

The immediate sources of other provisions in the new constitution are to be found in language borrowed from the federal constitution and the constitutions of sister states, especially those of neighboring New York and Pennsylvania. One contribution from the United States constitution is the provision that the governor may fill a vacancy which "happens during the recess of the legislature." The amending article was lifted almost verbatim from the Pennsylvania constitution of 1838. Our peculiar three-year term for governor, which has now been abandoned everywhere else, was similar to the terms in Pennsylvania and Virginia and Indiana in 1844, and in New York prior to 1821. For the requirement that state bond issues be submitted to popular vote, our convention had the precedent of a similar provision adopted in Rhode Island only the year before.

When a constitutional device is imported from another jurisdiction it is usually selected or adapted to meet local conditions or ideas. The substitution of the lay judges for the senators in the high court, borrowed from New York, is a case of such adaptation. An illustration of selection is the choice of the weak veto, requiring only a majority vote to override it, first introduced in Kentucky in 1799, rather than the strong veto, requiring a two-thirds vote to override it, introduced in the Massachusetts constitution of 1790.[189] In this choice, New Jersey was true to her own tradition of a weak or dependent governor.

The study of the growth and cross-fertilization of state constitutions recommended by Lord Bryce to the philosophic inquirer into . . . the science of comparative politics" is still in its infancy.[190] This

volume of debates will add appreciably to the source material available to future "philosophers," because only a small part of the exchange of ideas and experience is clearly recorded in the constitution as adopted. For example, our convention received and debated a report recommending the creation of a court of reconciliation modeled after similar bodies in Denmark and Mexico. Although the recommendation was not followed, the New Jersey committee report was read in the Kentucky convention of 1849 and apparently influenced the deliberations of that body.[191]

This is not the place for an evaluation of the work of the convention. The proof of the constitution is in its operation. The proof of the New Jersey constitution of 1844 must therefore be found in the history of the last ninety-eight years. The debates, however, supply an indispensable introductory chapter to that history. And the reader of the debates should not forget the date of the convention, because there are a number of features of New Jersey's present constitution which clearly bear the imprint of the age in which it was written.

Take the length of the constitution for example. When it came from the convention in 1844 it was slightly less than average in length. Now it is the third shortest state constitution. However, it is more than three times as long as the original New Jersey constitution of 1776 and it is considerably longer than the United States Constitution. Much of the expansion of the constitution between 1776 and 1844 was due to the development and clarification of the American conception of a written constitution as an outline of the frame of government and a set of checks on governmental power. But it contains many details concerning such matters as the militia, the courts, and state and county officers which no longer seem fundamental.

A curious survival which must be misleading to unwary readers of our present constitution is the provision in Article VII, Section II, paragraph 7, that "Justices of the peace shall be elected by ballot at the annual meetings of the Townships in the several Counties of the State." Apparently the makers of the constitution of 1844 could not imagine the day when New Jersey would no longer continue holding the annual town meetings brought by Robert Treat and his followers from New England. Since the abolition of the town meeting which used to be held each spring, justices of the peace have been chosen at the November general election, a practical expedient, whatever it may do to the letter and spirit of the constitution.[192a]

Perhaps it should be observed in justification of the constitutional provisions concerning the offices of surrogate, justice of the peace, county clerk, and prosecutor, that the convention wished to change existing practices with respect to their selection. It transferred the election of justices of the peace and county clerks from joint meeting, in which it was reposed by the constitution of 1776, to the people. In like manner, the new constitution substituted popular election of surrogates and gubernatorial appointment of prosecutors for selection by joint meeting prescribed by existing statutes. The provision for sheriffs and coroners was simply carried over from the old constitution.

The treatment of county government by the convention illustrates the fact that constitution makers are generally guided by a desire to meet specific problems rather than by any inclination to write a "model constitution" completely consistent in its inclusions and exclusions. This helps to explain why the constitution does not mention boards of chosen freeholders, which we think of as governing bodies of the counties and which, in 1844, already had a long history behind them. The selection of representatives of the towns to perform certain fiscal functions for the county goes back to the days of the proprietors;[192] but the convention, finding no fault with the statutory provisions for boards of freeholders, saw no reason for dealing with them.

The county as a unit of government has almost from the beginning occupied a somewhat ambiguous position. It is today both a unit of local government and an area for state administration. The constitution of 1844 carried forward a trend, started in the days of the proprietors, toward more and more emphasis on local autonomy. The county officers included in the constitution were the traditional representatives of the central rather than the local or popular authority in the counties. Local election of all the constitutional officers except the prosecutors was a reaction against supposed abuses, first by the royal governors and later by joint meeting. It did not change the primary responsibilities of these officers as agents of the state; but it helped to blur the distinction between state and local functions of the county. Later statutes have increased the confusion, with the result that responsibility for many county functions cannot be clearly placed. For example, law enforcement is divided between the elected sheriff, who cannot succeed himself, and an appointed prosecutor whose term is two years longer than that of the governor and does not usually coincide with that of the state's attorney-general. Where is responsibility here? Again, the original character of the

elected surrogate and county clerk as agents of the state is recognized in the constitutional provision that "when a vacancy happens" the governor shall fill the vacancy until it can be filled by election. Thus, an occasional accident restores to a modern governor a power habitually exercised by his colonial predecessors; but "acts of God" are too infrequent to make clerks and surrogates feel like state officers.[193]

The problem which the men of 1844 tried to solve was simply this: what is the least objectionable repository for the appointment of the traditional county officers? Disgust with joint meeting and distrust of the governor pointed naturally to the people. The appointment of the prosecutor by the governor is a rather remarkable exception, as a result of which New Jersey is one of the few states in which the local "state's attorneys" are not locally elected.[194]

The convention of 1844 can hardly be blamed for failing to draw a nice distinction between the appropriate sphere of county home rule and a well-defined area of state responsibility. On the one hand, few Americans yet saw with De Tocqueville's European eye the advantages of putting effective responsibility for law enforcement in the central or state governments. On the other hand, the miscellaneous business of county government was not large enough to suggest the need for a streamlined system. The men of 1844 would have been hard put to it, for example, to conceive of the utility of a single responsible county executive or manager.[195]

Another sign of the age in which the New Jersey constitution was framed is the short ballot for state offices, although the anxiety to curtail the appointing power of the legislature did result in fastening the long ballot on the counties. New Jersey is today one of only three states in which the governor is the only official chosen by statewide election. In 1844, New Jersey had more company in this respect, but the movement for the popular election of state administrative officers was well under way and was embraced in New York in 1846 and in Pennsylvania and Virginia in 1850.[196]

Another peculiarity of the New Jersey constitution at the present time is the one-year term of assemblymen. The 1938 revision of the New York state constitution deprived New Jersey of its last remaining companion in the retention of this feature, which was universal among the original states.[197] In 1844 a majority of the states still adhered to the one-year term, although two years was already the rule in most of the newer states.

As we have already indicated, the central theoretical problem with which the convention delegates wrestled was the separation or distri-

bution of powers among the departments of government. In spite of the great stress placed by earlier thinkers on the importance of adequate powers in the executive branch, the convention failed noticeably to put the governor on an equal footing with the legislative and judicial branches. In this failure the convention was only responding to the confused state of public thinking concerning the meaning of the separation of powers and to the fact that the meager functions of state government had not yet developed a clear need for a vigorous executive. But the unlimited power of the legislature to create new departments and to elect or prescribe the terms and manner of appointing new executive officers has established the legislature more and more firmly in the driver's seat, as state administration has grown. In view of the frequent political disparity between the legislature and the governor, administrators elected by joint meeting are even less likely to be in accord with the governor than administrators elected by the people on the same ticket with the governor. Adoption of popular election of certain administrative officers in 1844 might have been a less serious obstacle to executive responsibility than the "compromise" between legislative and gubernatorial appointment which was finally effected.

The separation of powers can be made compatible with responsible government in both legislative and executive departments only on two conditions: (1) that the departments be as nearly as possible on an equal footing in their dealing with each other; and (2) that they develop an effective system of consultation and co-operation in the formulation of public policy. The failure to give the governor effective tools either for the enforcement of his position as chief administrator or for dealing with the legislature as an equal has tended to prevent the development of the second requirement. It has been observed again and again that an unnecessarily doctrinaire view which translated the separation of powers into an isolation of departments defeated the attempts of President Washington and Alexander Hamilton to develop a custom of interdepartmental co-operation between the president and congress.[186] This failure has been partly compensated for by the party system which has helped to give the president a paramount position as chief legislator quite inconsistent with the pure theory of the separation of powers and completely inconsistent with the intention of the first congressmen who spurned voluntary co-operation with the executive. Such compensation has not developed in New Jersey, partly because of the constitutional weakness of the governor, and partly because the political complexion of the state and

the equal representation of the counties in the senate have created a situation in which the two political branches of the government are seldom controlled by the same party.

As a result of the recognized difficulty of amending the New Jersey constitution, the document which is in force today is in most essential respects substantially the same document that came from the hands of the convention of 1844. It has been amended on only four occasions and practically the only important amendments were adopted in 1875, as a result of the work of a constitutional commission.

The New Jersey constitution as it stands today, therefore, is essentially a monument to three epochs in the development of American political thought and practice. The characteristics of those epochs are as clearly marked in its provisions as the dates 1776, 1844, and 1875, on the gravestones of successive generations in a family burial ground.

The first epoch, of which the constitution of 1776 is an excellent exemplar, put its faith in a representative legislature guided by a written constitution and controlled by annual election. This epoch represented a reaction against the executive or active phase of government which in most colonies had been carried on through the governors and their aides as agents of the royal, or rather the imperial power.

The second epoch grew out of the discovery that a written constitution was not self-executory and that legislatures, even if annually elected, are not necessarily wise and virtuous. This was the epoch of the separation of powers and of checks and balances. It may be said to have been opened by the adoption of the Massachusetts constitution of 1780, embodying John Adams's ideas, and to have been fully launched by the adoption of the United States constitution of 1789. As we have seen, the makers of the constitution of 1844 embraced the separation of powers dogma without writing all of the essential elements of the system as understood by Adams and Madison and Hamilton into their document. The men of 1844 had learned to trust the legislature less than did their forebears of 1776, but they were not disposed to trust the governor much more. The constitution of 1844 departs therefore from the principle of legislative responsibility for the general conduct of the government, which was implicit in the constitution of 1776, without making provision for any other system of responsibility.

The third epoch, which reached its culmination in New Jersey, as in most of the other states, toward the latter part of the last

century, represents a still deeper distrust of the legislature. Instead of carrying the separation of powers to the logical conclusion of strengthening the executive branch, most states in this period did what New Jersey did in 1875: that is, they imposed a great many specific limitations on the legislature to be enforced by the courts through judicial review. There had of course been constitutional limitations on the legislature in the original constitution, and these limitations were added to in the next hundred years as improvident public finance and other specific evils showed the need for such limitations as those on the borrowing of money and the chartering of banks included in the New Jersey constitution of 1844. The full battery of restrictions designed to prevent the legislature from playing venal politics by the enactment of special laws affecting private persons, corporations and local governments were not generally adopted until after the civil war. The simultaneous growth of business and cities created demands for government action which entailed opportunities for political benefits undreamed of in a simpler age. Hence, the great increase in constitutional limitations designed to prevent the abuse of legislative power.

Conservatism and the great difficulty of amending the constitution of 1844 have preserved the New Jersey constitution from appreciable change in what might be termed the fourth epoch in the history of American state constitutions. This epoch has been characterized less by anxiety to limit government than by a desire to see that government gets something done. On the legislative side this new desire for action has brought forth the popular initiative. On the executive and judicial side it has brought forth various schemes of administrative reorganization and court reform.

8. POSTSCRIPT ON ATTEMPTS TO CHANGE THE 1844 CONSTITUTION

The 1875 changes were submitted as 28 separate amendments and all were approved by the people. Private, local and special laws were prohibited in a long list of cases, including the regulation of the internal affairs of towns and counties, appointment of local officers, the selection of jurors, changing the pay of public officers during their terms, the management and support of free public schools, the granting of corporate powers or of any exclusive privilege or immunity. Curbs were put on the revival or incorporation of old law in new legislation. The much maligned requirement that "property

shall be assessed for taxes under general laws and by uniform rules, according to its true value" was introduced into the constitution. Local units were forbidden to make gifts or loans and the state was forbidden to make any donation of land or money for "any society, association or corporation." The legislature was required to maintain a "efficient system of free public schools" for all children between 5 and 18 years. A flat salary of $500 a year for legislators was substituted for the 1844 provision of $3.00 per diem. The governor was given the right to veto specific items in appropriation bills. The right to appoint the keeper of the state prison and common pleas judges was transferred from the legislature to the governor with the consent of the senate, and the existing statutory method of electing the comptroller by joint meeting was frozen into the constitution. Terms of sheriffs and coroners were extended from one to three years but the provision that after three years in office a sheriff or a coroner shall be ineligible for another three years was retained. The consent of the senate was required for the appointment of the adjutant general and quartermaster general, previously appointed by the governor alone. The legislature was required to provide a method of absentee voting for men "in the actual military service."[199]

The 1873 Commission made a number of proposals which were not referred by the legislature to the people. These included debt limits for county and local governments, a mandatory referendum on the question of dividing any county, detailed requirements for the printing and actual reading of bills in the legislature, a prohibition against tax exemption, a curb on the right of the legislature to amend municipal charters, a prohibition against legislation limiting damages for injuries to persons or property, a safeguard against bribery of members of the legislature, and a two-thirds vote to override a veto by the governor.

The evils which many of these and other similar proposals of the time were designed to meet were set forth briefly by Governor Joel Parker in his annual message of January 14, 1873, recommending a constitutional convention or commission. The emphasis was on prevention—prevention of hasty, ill-considered, ambiguous, deceptive or improvident action, especially by the legislature. "Haste in legislation is a great evil," said Governor Parker. This evil might be mitigated by procedural safeguards, but the prohibition against private, local, and special legislation seemed like the most promising single remedy. This," said Governor Parker, "would dispense with at least nine-tenths of the business brought before the legislature under the present system. The general public laws passed at the last session are con-

tained in about 100 pages of the printed volume, while the special and private laws occupy over 1250 pages." These complaints were of course not confined to New Jersey.[200]

The reason for the constitutional trend in the 1870's is clear when we look at the statistics on the growth of population and of municipal and private incorporations since the 1840's. The unrestricted, individualized treatment of corporations and municipalities by the legislature was fast becoming out of the question. The burden was too great, yet the temptation to exploit the business for personal or political profit had been too strong to induce legislatures to adopt effective self-denying ordinances. Hence the call for "constitutional limitations."

The population of the state increased about 2½ fold between 1844 and 1870. During the same period, the number of municipalities almost doubled, increasing from 139 to over 270. In 1840, except for 3 cities and 1 borough, all municipalities were still townships, whereas by the '70's there were some 50 places sufficiently "built up" to have been incorporated as cities, boroughs or towns.[201]

The 1875 amendments necessarily entailed a tremendous increase in judicial review of legislation. Since 1875 over half of the more than 300 legislative acts invalidated by the courts were nullified because of the 1875 amendments. And more than two-thirds of these acts invalidated on the basis of 1875 amendments were found to be in conflict with Article IV, Sec. VII, Par. 11, forbidding the enactment of private, local or special laws.

In spite of the vast amount of litigation and the hundred-odd acts declared unconstitutional under the prohibition against private, local and special acts, the evil of special local legislation was by no means scotched by the 1875 amendment. The Commission to Investigate County and Municipal Taxation and Expenditures in 1931 complained about "the vast amount of special legislation enacted, a practice which is facilitated by the elaborate but meaningless classification of local subdivisions."[202]

A number of other changes, some of them affecting the structure of government, were extensively debated in the 1873 Commission but not recommended by it in the form of amendments. These included proposals to: extend the terms of assemblymen and senators to two and four years, respectively; prescribe biennial sessions; reorganize the senate on the basis of senatorial districts of equal population; extend terms of supreme court judges to 21 years or perhaps to life; provide for the election of judges; provide for the appointment of

vice chancellors; permit or require a poll tax or a literacy test of voters; prescribe the method of electing a constitutional convention whenever authorized by the people at a referendum submitted at the discretion of the legislature.

Only four amendments have been approved by the people since 1875. Two adopted in 1897 prohibited all forms of gambling and forbade the governor to give a recess appointment to a person who, having been nominated to the senate, had not been confirmed before the recess. The 1927 amendment asserted the power of the legislature to permit municipalities to enact zoning ordinances. And in 1939 the prohibition against gambling was relaxed in order to permit pari-mutuel betting at horse races, thus in effect legalizing the particular form of gambling which had occasioned the adoption of the 1897 prohibition.

Many other amendments have been started on the long route from passage by the first of two successive legislatures to the referendum vote by the people. Nineteen of them have reached the referendum stage only to be turned down by the people at sparsely attended special elections. Since 1873, four constitutional commissions (1881, 1894, 1905 and 1942) have made recommendations to the legislature. The 1894 and 1905 commissions were confined to the making of proposals on the judiciary.[203]

The most frequent objects of proposed amendments, at least of those which have succeeded in passing one or more of the constitutional hurdles, have been to extend terms of legislators and governor and provide for biennial sessions, to effect judicial reform, to ease the amending process, and to provide for assembly districts.[204]

JOHN E. BEBOUT.

Newark,
New Jersey.

Notes

(To the Writers' Project belongs the credit for gathering most of the newspaper items for the period through 1844.—J. B.)

Chapter 1

1. Ford, Paul Leicester, coll. and ed., The Writings of Thomas Jefferson, X, pp. 42-4. The quotations from Jefferson's letters used here and below may also be found in Adams, James Truslow, Jeffersonian Principles and Hamiltonian Principles.

Chapter 2

2. Hartshorne, Charles H., Courts and Procedure in England and New Jersey, 1935, p. 5. Also Brogan, D. W., The English People, Impressions and Observations, Knopf, New York. P. 108: "The most indisputably English export to the United States (apart from the basic language) was the common law, but if you want to see the old common law in all its picturesque formality, with its fictions and its fads, its delays and uncertainties, the place to look for them is not London, not in the Modern Gothic of the Law Courts in the Strand, but in New Jersey. Dickens, or any other law-reformer of a century ago, would feel more at home in Trenton than in London, where, despite the survival of wigs and miniver and maces, the law has been modernized, simplified, made more rapid and efficient; in fact, everything that is desirable except cheap."

3. For these and other documents of the proprietary period, see Leaming and Spicer, Grants and Concessions of New Jersey. For historical treatments of the proprietary period *see* Clokie, Hugh MacD., Chaps. III-VI, New Jersey,—A History, II (Kull, Irving S., Ed.); Whitehead, John, The Judicial and Civic History of New Jersey, Chaps. II-VII; Tanner, Edwin P., The Province of New Jersey, Chaps. I-VIII; Whitehead, W. A., East Jersey Under the Proprietary Governments; Gordon, Thomas F., History of New Jersey, 1834, Chaps. I-IV; Smith, Samuel, History of the Colony of Nova Caesarea or New Jersey; Mulford, Isaac S., A Civil and Political History of New Jersey, 1851, Chaps. VIII-XIV; Andrews, C. Mc L., Colonial Self-Government, Chaps. VII-VIII; Scott, Austin, "The Influence of the Proprietors in Founding the State" in Bicentennial Celebration of the Board of American Proprietors of East New Jersey, published at Newark, 1885. For source materials *see* Documents Relating to the Colonial History of the State of New Jersey (22 vols.), cited as New Jersey Archives.

4. Leaming and Spicer, *op. cit. See also* Field, Richard Stockton, The Provincial Courts of New Jersey, for documents in the Appendix and for an account of the establishment of courts. For historical accounts of New Jersey as a royal province see appropriate chapters of most of the works cited above, and *also* Fisher, Edgar J., New Jersey as a Royal Province, 1738 to 1776.

5. Quoted in Kemmerer, D. L., Path to Freedom, 1940, p. 175.
The documents of the period are full of such appeals to the higher or alleged constitutional law of the colony. The first colonists felt that they had contractual rights in the liberties granted in the proprietary concessions, drawn to attract settlers. They successfully resisted various encroachments, including an attempt by new proprietors to substitute the "Fundamental Constitutions" of 1683 for the old Concessions in East Jersey. Although the royal commissions and instructions were certainly not contracts, the colonists obviously thought of them in much the same light as the earlier concessions. See, for example, the famous Remonstrance of 1707, which appealed to Magna Charta, the Instructions to the Governor, and "the Lyberties of the people" and "the privileges of the house of Representatives" in protest against divers acts of Lord Cornbury. (*Journal and Votes of the House of Representatives of New Jersey in their First Sessions of Assembly*, Jersey City, 1872, pp. 10[illegible] *ff.*) The exchange of messages between the Governor and the first assembly in 1703 is an interesting evidence of the tacit acceptance of a "higher law background" for the conduct of the royal government. The house ordered the speaker to ask the Governor to grant four "accustomed Rights and privileges." The governor granted "the three first as the Just and undoubted Right of the House, but did reject the 4th as an Innovation."
The chief privileges agreed to were those of freedom of debate and freedom from arrest for members and their servants, which Parliament had won in the fifteenth century. Governor Cornbury took the occasion to congratulate the colony on the enjoyment of "all the liberty, happiness and Satisfaction that good Subjects can wish for, under a most gracious Queen, and the best Laws in the Universe; I mean the Laws of England." In response the assembly expressed "an Intire dependence on her Majesty; that she will protect us in the full enjoyment of our Rights, Liberties, and Properties." (*Ibid.*, pp. 4-7.) For other Illustrations of the concept of fundamental law, all volumes cited in preceding notes.

6. Field, R. S., *op. cit.*, pp. 42–3.

Chapter 3

7. Erdman, Charles R., The New Jersey Constitution of 1776. pp. 44 ff. This book is invaluable to the student of New Jersey constitutional history. It has been extremely helpful in the preparation of this chapter. In order to enlarge the available record, we have, whenever possible, employed citations and quotations not set down by Erdman. *See also* Gordon, *op. cit.*, pp. 180ff. For an account of the government operating in 1834, under the constitution of 1776, *see* Gordon's Gazetteer of the State of New Jersey, pp. 43–73.

8. Griffith, William, Eumenes—A collection of papers written for the purpose of exhibiting some of the more prominent errors and omissions of the Constitution of New Jersey and to prove the necessity of calling a convention for revision and amendment, p. 12. This series of 53 papers began to appear in the New Jersey Gazette in 1798 and was published in book form in 1799. It expounded with much ingenuity the principal objections to the constitution and continued until 1844 to be the bible of the advocates of revision.

9. Erdman, C. R., *op. cit.*, p. 39. Judge Tucker was president of the 1776 convention.

10. *Ibid.*

11. Hoar, R. S., Constitutional Conventions, p. 219. Hoar says later (p. 232): "popular and governmental acquiescence will cure almost any informality."

12. Trenton State Gazette, Feb. 12, 1844.

13. Elmer, Lucius Q. C., Digest of the Laws of New Jersey . . . (Elmer's Digest), 1838, p. 392.

14. Following colonial custom, surrogates were appointed by the governor acting as ordinary until 1822. Prosecutors were appointed by the attorney general until 1822, when a short-lived act vested the appointment in the court of quarter sessions then held by the justices of the peace for the county. For a history of the office of surrogate, see In Re Abraham Coursen's Will, 4 N. J. Equity 408, 1843. For history of the county prosecutor, see 106 N. J. Law 411, 1929.

Chapter 4

15. Griffith, W., *op. cit.*, pp. v, vi.

16. *Ibid.*, p. 18.

17. *Ibid.*, pp. 10, 11.

18. *Ibid.*, p. v.

19. Federalist, The, No. 47 (Everyman's ed.). See also, Griffith, W., *op. cit.*, p. 126.

20. Locke, John, Second Treatise of Government (Everyman's ed.). Montesquieu, Charles Louis de S., Spirit of the Laws.

21. Locke, John, *op. cit.*, chap. XII.

22. Carpenter, W. S., The Development of American Political Thought, p. 51.

23. Erdman, C. R., *op. cit.*, pp. 32–6. For the Adams letter see Adams, Charles Francis, ed., The Works of John Adams, IV, p. 202.

24. Text of proposed constitution, *ibid.*, IV, pp. 213 [illegible] with notes by C. F. Adams, ed.

25. *Ibid.*, pp. 269 ff.

26. Pargellis, Stanley, "The Theory of Balanced Government," The Constitution Reconsidered, Conyers Read, ed., p. 39.

27. Griffith, W., *op. cit.*, p. 121.

28. Adams, C. F., *op. cit.*, IV, p. 290; Griffith, W., *op. cit.*, p. 137 n.

29. Adams, C. F., *op. cit.*, IV, pp. 284–6.

30. *Ibid.*, IV, p. 579, 581.

31. *Ibid.*, IV, p. 300.

32. Federalist, The, Nos. 48 and 51.

33. Adams, C. F., *op. cit.*, IV, pp. 290–1.

34. Griffith, W., *op. cit.*, p. 122.

35. Federalist, The, No. 48.

36. *Ibid.*, No. 46.

37. *Ibid.*, No. 51.

38. "Opinion on the Constitutionality of a National Bank," quoted in Adams, Jame Truslow, *op. cit.*, p. 26.

39. Ford, P. L., *op. cit.*, V, p. 104.

40. Locke, J., *op. cit.*, chap. XIV.

41. *Ibid.*, chap. XIII.

42. de Tocqueville, A., Democracy in America, 7th ed., Henry Reeve, trans. I, p. 86.

43. Griffith, W., *op. cit.*, p. 122 n. *See also* Gordon's History, *op. cit.*, p. 182. "Th powers of government are commonly divided into the legislative, executiv and judicial branches; though the third is but a modification of the secon since the making and executing the laws, comprise the whole duty of ever government."

44. Fortescue, Sir John, De Laudibus Legum Angliae, chap. IX.

45. Ford, P. L., *op. cit.*, X, p. 40. We have already noted that Jefferson felt th judges should be elected by the people in order to make them independe of both of the other branches.

46. Griffith, W., *op. cit.*, pp. 116–17.

47. Griffith felt that the governor as president of council had undue weight i legislation, "far beyond his *casting vote* . . . he ought not to preside there it may be well enough to give him a *qualified* negative, but let him b *responsible*, and act in his own sphere of office." (*Op. cit.*, p. 67 n.)

48. Locke, J., *op. cit.*, chaps. IX and XI. Further discussion and illustrations o difficulties encountered in interpreting and applying the separation of powe are presented in later sections of this essay.

49. Federalist, No. 39.

50. Prescott, A. T., Drafting the Federal Constitution, A Rearrangement o Madison's Notes . . ., p. 215.

51. *Ibid.*, p. 214.

52. Griffith, W., *op. cit.*, p. 121 n.

53. Federalist, The, No. 51.

54. Adams, C. F., *op. cit.*, pp. 587–8.

55. Practical considerations and vested interests frequently kept this ideal fro being realized; but it was the ideal generally approved. Carpenter, W. S *op. cit.*, pp. 91 ff.

56. Adams, C. F., *op. cit.*, IV, p. 466.

57. Burgh, J., Gentleman, Political Disquisitions; or, an Enquiry Into Publi Errors, Defects, and Abuses, Robert Bell and William Woodhouse, Phila 1775, v. III. A long explanatory title stated the purpose: "To draw the time

attention of Government and People, to a due Consideration of the Necessity, and the Means of Reforming these Errors, Defects, and Abuses; of Restoring the Constitution, and Saving the State." All quotations in the text are, unless otherwise credited, from the last chapter, entitled "Conclusion," and "addressed to the independent Part of the People of Great Britain, Ireland, and the Colonies." A list of "Encouragers" or subscribers was headed by "His Excellency George Washington, Esq.; Generalissimo of all the forces in America and a Member of the Honorable, The American Continental Congress." It included Thomas Jefferson, John Hancock, James Wilson, Roger Sherman, Robert Morris, Anthony Wayne and other Revolutionary leaders. The New Jersey names on the list included: John De Hart, member of the Continental Congress, John Lambert, Joseph Borden, probably Samuel Smith, Jr., and others. Mr. Nelson H. Peppler of the New Jersey Writers' Project made a rather thorough search of the sources in the Newark Public Library in an attempt to identify the "Encouragers" with the New Jersey residences or connections. At least the four men listed apparently lived here at the time; others had interests here.

58. *Ibid.*, p. 16.

59. "Liberty of Speech and Writing on Political Subjects" was considered necessary to the preservation of liberty in general, and the author complained bitterly of what he regarded as unconstitutional prosecutions for libels and the use of "general warrants for apprehending the authors of seditious or treasonable libels, and for seizing their papers." He felt sure, however, that, "These severities upon private persons, who write and speak freely of ministerial conduct, would, by an incorrupt parliament be immediately restrained, and the subjects be set at liberty to remark as they pleased, upon the conduct of those who undertook the management of their affairs." (*Ibid.*, chap. IX.)

Chapter 5

60. Griffith, W., *op. cit.*, p. v.

61. Fee, Walter R., The Transition from Aristocracy to Democracy in New Jersey, 1789-1829, p. 115.

62. Reprinted in Elizabeth-Town Gazette, Nov. 2, 1819. See also Erdman, C. R., *op. cit.*, pp. 134–6.

63. Erdman, C. R., *op. cit.*, p. 136.

64. *Ibid.*, pp. 137–9.

65. "Manifesto to the People of New Jersey," Trenton State Gazette, Feb. 23, 1844.

66. Griffith, W., *op. cit.*, p. 21 n. (b).

67. Scott, A., "Holmes *v.* Walton, the New Jersey Precedent," American Historical Review, IV, p. 456.

68. Reprinted in the Newark Gazette, May 22, 1804, from the Federalist and State Gazette of Trenton.

69. State *v.* Parkhurst, 9 N. J. Law 427, 423. See also Erdman, C. R., *op. cit.*, pp. 78–80 for discussion of the case.

70. Erdman, C. R., *op. cit.*, pp. 56, 84.

71. Griffith, W., *op. cit.*, p. 33.

72. Fee, W. R., *op. cit.*, pp. 31–2.

73. Newark Gazette, Jan. 7, 1800.

74. Griffith, W., *op. cit.*, Postscript.

75. Erdman, C. R., *op. cit.*, pp. 85, 86.

76. Debate in council, Feb. 9, 1844, Trenton State Gazette, Feb. 12, 1844.

77. "A" in New Jersey Telescope, Newark, May 2, 1909. Quotations from the last of a series of four anonymous articles which appeared in the paper April 14, 21, 28 and May 2. "A's" philosophy was not calculated to win Republican support for constitutional revision; but he obviously enjoyed "needling" the Republicans, who had controlled the state since 1801, by pointing out violations of Jeffersonian principles in the constitution.

78. "Publius" in the Centinel of Freedom, Newark, Jan. 23, 1816.

79. Debate in council, *op. cit.*

80. Erdman, C. R., *op. cit.*, pp. 46, 47, 99 ff.

81. Ford, P. L., *op. cit.*, V, pp. 103–4.

82. de Tocqueville, A., *op. cit.*, I, p. 310.

83. Both quotations in Erdman, C. R., *op. cit.*, pp. 100–1.

84. Paraphrase by Justice Dixon (N. J. Supreme Court) in Drake *v.* State, 53 N. J. Law 23, 1890. This opinion gives an excellent summary of the history of the legal protection of freedom of the press.

85. Erdman, C. R., *op. cit.*, chap. V. For the national development of such doctrines see especially two articles by Prof. E. S. Corwin: "The Basic Doctrine of American Constitutional Law," XII Michigan Law Review, 247; and "Due Process of Law Before the Civil War," 24 Harvard Law Review, 463.

86. U. S. Supreme Court Justice Baldwin in Bonaparte *v.* Camden & Amboy R. R. Co., 1 Bald. CC220, 1830.

87. Scudder *v.* Trenton Delaware Falls Co., 1 N. J. Equity 694, 720 ff., 1832.

88. Erdman, C. R., *op. cit.*, p. 99.

89. Ten Eyck *v.* Delaware and Raritan Canal Co., 18 N. J. Law 200, 203.

90. Erdman, C. R., *op. cit.*, p. 109.

91. Chief Justice Mercer Beasley in State, Dufford, Prosecutor *v.* Decue, 31 N. J. Law 302, 1865.

92. Traphagen *v.* West Hoboken, 39 N. J. Law 232, 1877.

93. N. J. R. R. and Transportation Co. *v.* Abraham Suydam, 17 N. J. Law 25, 1839. Quotation from headnote.

94. State *v.* Anderson, 1 N. J. Law 318, 328.

95. Ignaciunas *v.* Risley, 98 N. J. Law 712.

96. Corwin, E. S., *op. cit.*

97. Constitution of 1844, X, 1.

98. Erdman, C. R., *op. cit.*, p. 100.

99. Griffith, W., *op. cit.*, pp. v, vi.

100. "A" in the New Jersey Telescope, *op. cit.*

101. Griffith, W., *op. cit.*, p. 149.

102. Clokie, H. McD., "New Jersey and the Confederation," New Jersey, A History (Irving S. Kull, ed.), II, p. 555.

103. The Constitution, and Farmer's and Mechanic's Advertiser, Woodbury, April 2, 1844.

104. Trenton State Gazette, March 24, 1837.

105. Griffith, W., *op. cit.*, pp. 138–9.

106. *Ibid.*, pp. 81 ff.

107. *Ibid.*, p. 102.

108. The Gazette, Newark, Jan. 7, 1800.

109. Clokie, H. McD., "Federalists and Republicans," New Jersey, A History, II, p. 563. (Irving S. Kull, Ed.)

110. Griffith, W., *op. cit.*, p. 106 n.

111. de Tocqueville, *op. cit.*, I, p. 297.

112. *Ibid.*, I, pp. 298–306.

113. Fee, W. R., *op. cit.*, p. 169. See also Clokie, H. McD., "Federalists and Republicans," New Jersey, A History, II, p. 568 for the digest of "A Letter to the Democratic Members of the New Jersey Legislature."

114. Griffith, W., *op. cit.*, p. 55.

115. Field, R. S., *op. cit.*, p. 126.

116. *Ibid.*, pp. 201–2.

117. Whitehead, J., The Judicial and Civil History of New Jersey, pp. 401 ff.

118. Erdman, C. R., *op. cit.*, p. 125.

119. Griffith, W., *op. cit.*, pp. 130–9.

120. Lancaster (Pa.) Intelligencer, June 10, 1845. (Quoted in Monmouth Democrat, June 18, 1845.)

121. Griffith, W., *op. cit.*, p. 138. *Alden's New Jersey Register for 1812*, Wm. Tuttle, Publisher, Newark, lists some 392 justices of the peace, of whom 143 were common pleas judges.

122. Fee, W. R., *op. cit.*, pp. 30-1. The extent of militia patronage is indicated by the list published in Alden's *op. cit.* This list included 163 officers,—1 major-general, 11 brigadier-generals, 47 lieutenant-colonels, and 104 majors,—all appointed by joint meeting.

123. *Ibid.*, pp. 166–8.

124. Clokie, H. McD., "Federalists and Republicans," New Jersey, A History, II, pp. 563–4; "From the War of 1812 to Jacksonian Democracy," *ibid.*, p. 574. (Irving S. Kull, Ed.)

125. Monmouth Democrat and Farmers' and Workingmen's Advocate, March 17, 1842.

126. Erdman, C. R., *op. cit.*, p. 129.

127. N. J. Senate Journal, 69, pp. 175–219.

128. Erdman, C. R., *op. cit.*, p. 137.

129. Griffith, W., *op. cit.*, pp. 62–72.

130. *Ibid.*, pp. 65–6.

131. *Ibid.*, p. 69.

132. "A" in the New Jersey Telescope, *op. cit.*

133. Debate in council, *op. cit.*

134. Griffith, W., *op. cit.*, p. 61.

135. *Ibid.*, pp. 60, 62.

136. Debate in council, *op. cit.*

137. Griffith, W., *op. cit.*, p. 53.

138. "Publius" in the Centinel of Freedom, Newark, Jan. 23, 1816.

139. Griffith, W., *op. cit.*, pp. 53–4.

140. Trenton State Gazette, Feb. 26, 1844.

Chapter 6

141. Erdman, C. R., *op. cit.*, p. 140.

142. "Manifesto to the People of New Jersey," *op. cit.*

143. Trenton State Gazette, Feb. 16, 1844.

144. Debate in council, Feb. 6, 1844, Trenton State Gazette, Feb. 7, 1844.

145. Jameson, J. A., The Constitutional Convention, Its History, Powers, and Modes of Proceeding, 1st ed., p. 264 and footnote.

146. Monmouth Democrat, Freehold, Oct. 31, 1844.

147. *Ibid.*, Oct. 17, 1844. The "misrepresentations, unfounded charges," etc., had to do mostly with Mr. Thomson's obvious interest in the Camden and Amboy-Delaware and Raritan monopoly. Mr. Thomson had been secretary of the Joint Companies, and the Whigs naturally charged that if he became the first governor under the new constitution, both the executive and judicial branches of the government would be under the complete control of the companies. The Whig victory was assured by the failure of the strong anti-monopoly wing in the Democratic party to give the state ticket wholehearted support. *Cf.* Lane, Wheaton J., From Indian Trail to Iron Horse, pp. 338–9.

148. Newark Evening News, Jan. 26, 1911, speech before Newark Board of Trade.

149. *Ibid.*

150. *See* Fee, W. R., *op. cit.*, especially the "Introduction," which points out that national events had been much more important than state events in "the movement which resulted gradually in the conflict of parties." This was only partly due to the responsibilities of the legislature in connection with national elections, including the setting up of congressional districts, the election of United States senators, and, at the beginning, the election of presidential electors. Mr. Cattell referred in the convention to weeks spent by the legislature "in the discussion of resolutions to instruct our Senators and Representatives in Congress how they shall discharge their duties." "States' rights" implied a sphere of action from which the federal government should refrain, whether the states acted or not; but they also meant, in practice, an absorbing interest on the part of the people and governments of the states in national affairs. The result was a focusing of attention and orientation of politics toward Washington, even when the object was to curb national power.

151. Erdman, C. R., *op. cit.*, p. 100. See also Scott, Austin, *op. cit.* Dr. Scott traced the well known New Jersey attachment to vested rights to early colonial days, thus: "The latest writer on American Colonial History (Lodge, English Colonies in America, p. 278) says that the colonists of New Jersey had a strong respect for vested rights. May we not attribute the feeling to the experience, which grew out of the early and safe system of the proprietary grants, and, on the other hand, of the disputes, in some parts, which enforced the necessity of secure titles?"

152. One writer has said that they included "the most distinguished Jerseymen of the day." (Clokie, H. McD., "The Constitution of 1844," in Kull, I. S., ed., New Jersey, A History, II, p. 578.)

153. "A" in the New Jersey Telescope, April 28, 1809.

154. Ross *v.* Freeholders of Essex County, 69 N. J. Law 291.

155. de Tocqueville, *op. cit.*, p. 72.

156. *Ibid.*, p. 83.

157. *Ibid.*, p. 91.

158. Freeman's Banner, Salem, March 17, 1840.

159. de Tocqueville, *op. cit.*, pp. 75–6. de Tocqueville would doubtless have thought of county officers elected by joint meeting as being about as immune to administrative direction as township officers elected by town meeting. It might interest some modern advocates of more detailed judicial control over administrative action to reflect that it was the very lack of a highly developed administrative organization which made judicial control seem necessary to de Tocqueville. The truth is that our emphasis on judicial process has been both cause and effect of inadequate or undeveloped administrative process.

160. *Ibid.*, pp. 73 and 76.

161. *Ibid.*, p. 78.

162. Ferry *v.* Williams, 12 Vroom 332.

163. State, Dufford, Prosecutor *v.* Decue, 31 N. J. Law 302.

164. de Tocqueville, *op. cit.*, pp. 71 and 73.

165. *Ibid.*, p. 164.

166. *Ibid.*, p. 165.

167. *Ibid.*, p. 130. Locke's "federative power" has contributed much to the greatness of the presidency.

168. (a) Pat. 450; (b) Pat. 203; (c) Pat. 116; (d) Pat. 449; (e) Pat. 342; (f) Pat. 380; (g) El. 390; (h) El. 205; (i) El. 233; (j) Act of Dec. 2, 1802; (k) El. 534; (l) El. 540; (m) El. 149; (n) El. 497; (o) El. 126; (p) El. 400.

169. Elmer's Digest, p. 242.

170. Paterson's Laws, p. 51.

171. Griffith, W., *op. cit.*, p. 119.

172. State *v.* Parkhurst, *op. cit.*, cited with approval in Fritts *v.* Kuhl, 51 N. J. Law 191, 1888.

173. Figures printed in Directory of the City of Newark for 1841-42.

174. *See* Spicer, Geo. W., "From Political Chief to Administrative Chief," an account of the recent acquisition of executive power by the governor of Virginia, in Haines and Dimock, editors, Essays on the Law and Practice of Governmental Administration; also Lifson, L., The American Governor from Figurehead to Leader.

175. National Institute of Public Administration, Report on a Survey of the Organization and Administration of the State Government of New Jersey, 1930, p. 12. See also Report of the Commission on Revision of the New Jersey Constitution, 1942.

176. de Tocqueville, *op. cit.*, p. 281 (abridged).

177. Holcombe, A. N., State Government in the United States, 3d ed., p. 95.

178. Sackett, W. E., Modern Battles of Trenton, II, p. 380.

179. Lane, Wheaton J., From Indian Trail to Iron Horse, p. 334.

180. Agger, Eugene E., "Banking in New Jersey," New Jersey, A History (Irving S. Kull, ed.), IV, pp. 1213-4, 1223.

181. McLoughlin, Wm. G., "The Beginning of the Railroad Tax System of New Jersey," The Historical Society of Hudson County, No. 13, pp. 41-5.

182. New Jersey Constitution as Amended, Art. IV, Sec. VII, par. 11.

183. Child is recorded as voting *pro*, though in debate he argued *contra*.

184. Lane, Wheaton J., *op. cit.*, 333 ff.

185. *Ibid.*, pp. 337-8.

186. McLoughlin, Wm. G., *op. cit.*, p. 47 n.

Chapter 7

187. In re Vice-Chancellors," Atlantic Reporter, 148, p. 570.

188. Leaming and Spicer, *op. cit.*, p. 623. See also opinion of Justice Van Syckel, Paul *v.* Gloucester County, 50 N. J. L. 585.

189. Holcombe, Arthur N., *op. cit.*, pp. 115-17.

190. Bryce, James, The American Commonwealth, 2d ed., I, p. 451.

191. Thorpe, F. N., A Constitutional History of the American People, II, p. 46.

192. *See* Act of Feb. 21, 1798, providing for the election of two chosen freeholders in annual township meetings, and the Act of Feb. 13, 1798, providing for the incorporation and powers of chosen freeholders. Elmer's Digest, pp. 574 and 66. For early colonial precedents *see* Scott, Austin, "The Influence of the Proprietors in Founding the State," pp. 57 *ff* in Bicentennial Celebration of the Board of American Proprietors of East New Jersey, Perth Amboy, Nov. 25, 1884 (Newark 1885). *See also* Howard, George E., An Introduction to the Local Constitutional History of the United States, 1889, pp. 366-7.

192a. *Cf.* Records of the Town of Newark, New Jersey, from Its Supplement in 1666, to Its Incorporation as a City in 1836, New Jersey Historical Society, Newark, N. J., 1864.

193. N. J. Constitution V, Par. 12.
The historical conflict between state responsibility and the demand for local self-rule with respect to the county officers is illustrated by the following spirited protest by an assembly of Morris County citizens. Joint-meeting had just elected a new surrogate for the county in place of one previously appointed by the governor to fill a vacancy. The governor's appointee had apparently been acceptable to the local people because he had been "recommended by the Bench and supported by their unanimous delegation." The legislature's appointee, on the other hand, had recently been defeated at the local polls for a public office. The following extracts from the "protest" appeared in the *Sentinel of Freedom*, November 20, 1827:

"If such a practice be tolerated in silence, no county will henceforth possess a restraining power over its own officers:—the faithful performance of duty will be secondary to attendance at Trenton. . . . . Is the time of the representatives to be diverted from all objects of grave discussion and public utility, in order that the doors of the Legislature may be obstructed by lobby sycophants, and that our Legislators may annually snuff clouds of incense offered by the herd of office-hunters?

"Such has been, and must continue to be, the effect of our representatives dictating, as a body, in the separate affairs of each county, under the pretext, that no county knows sufficiently its own interests."

194. *See* p. 356, "Problems Relating to Executive Administration and Powers," Vol. VIII, New York State Constitutional Convention Committee, 1938.

195. The growth of county government in the last hundred years may be illustrated by the fact that the item for mosquito extermination in the 1939 budget of Monmouth County was larger than the reported expenditures by the whole Monmouth County government one hundred years earlier. *See* 1939 Report of New Jersey State Department of Local Government and Monmouth Democrat, July 2, 1840.

196. Holcombe, A. N., *op. cit.*, p. 95.

197. *Ibid.*, p. 93.

198. Haines, C. G., "Ministerial Responsibility vs. Separation of Powers," in American Political Science Review, May 1922, XVI, No. 2, p. 194, particularly pp. 200–1. *See also* Wilson, Woodrow, Constitutional Government in the United States (1908), p. 138; *also* President Wilson's first special address to Congress, April 8, 1913, in Selected Literary and Political Papers and Addresses of Woodrow Wilson, II, 25.

Chapter 8

199. *See* accounts of deliberations of Commission, Newark Daily Advertiser for 1873: July 9, 23, Oct. 7, 8, 9, 10, 15, 16, 17, 22, 23, 24, 29, 30, Nov. 12, 13, 14, 19. For the amendments proposed by the Commission *see* Senate Journal, 1874.

200. *See*, for example, article by Franklin B. Hough, entitled "Constitutional Limitations," in Harper's Monthly Magazine, March, 1873, vol. XLVI, 570. Dr. Hough, forester, physician and historian, had edited the Convention Manual and the annotated constitution for the New York Constitutional Convention of 1867.

201. *See* compilation of data on county and municipal incorporations prepared by the New Jersey State Planning Board. *See also* Erdman, Charles R., Jr., Growth of Municipal Incorporations in New Jersey, Princeton Local Government Survey, 1937.

202. Report No. 1, p. 13.

203. *See* Erdman, Charles R., Jr., The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy. For reports of the first three Commissions *see* appropriate Senate Journals. For accounts of deliberations of the Constitutional Commission of 1881 *see* Newark Daily Advertiser for 1881, July 5, August 2, 3, 5, 6, October 1, 18, November 26, 28, December 6, 14, 28.

204. The supreme court in 1891 declared the forty-year-old practice of dividing the counties into single member assembly districts had been unconstitutional. State *v.* Wrightson, 56 N. J. Law 126.

Preliminaries

Preliminaries

[From the General Statutes of 1896]

CONSTITUTION OF 1776

WHEREAS all the constitutional authority ever possessed by the kings of Great Britain over these colonies, or their other dominions, was, by compact, derived from the people, and held of them for the common interest of the whole society; allegiance and protection are, in the nature of things, reciprocal ties, each equally depending upon the other, and liable to be dissolved by the other's being refused or withdrawn. *And whereas,* George the third, king of Great Britain, has refused protection to the good people of these colonies; and, by assenting to sundry acts of the British parliament, attempted to subject them to the absolute dominion of that body; and has also made war upon them in the most cruel and unnatural manner, for no other cause than asserting their just rights; all civil authority under him is necessarily at an end, and a dissolution of government in each colony has consequently taken place.

And whereas, in the present deplorable situation of these colonies, exposed to the fury of a cruel and relentless enemy, some form of government is absolutely necessary, not only for the preservation of good order, but also the more effectually to unite the people, and enable them to exert their whole force in their own necessary defense; and as the honorable the continental congress, the supreme council of the American colonies, has advised such of the colonies as have not yet gone into the measure, to adopt for themselves respectively such government, as shall best conduce to their own happiness and safety, and the well-being of America in general; we, the representatives of the colony of New Jersey, having been elected by all the counties in the freest manner, and in congress assembled, have, after mature deliberation, agreed upon a set of charter rights, and the form of a constitution in manner following, videlicet:

I. That the government of this province shall be vested in a governor, legislative council, and general assembly.

II. That the said legislative council and assembly shall be chosen, for the first time, on the second Tuesday of August next; the members whereof shall be the same in number and qualifications as is hereinafter mentioned; and shall be and remain vested with all the powers and authority to be held by any future legislative council and assembly of this colony, until the second Tuesday in October, which will be in the year of our Lord one thousand seven hundred and seventy-seven.

III. That on the said second Tuesday in October, yearly and every year forever (with the privilege of adjourning from day to day as occasion may require), the counties shall severally choose one person to be a member of the legislative council of this colony, who shall be and have been, for one whole year next before the election, an inhabitant and freeholder in the county in which he is chosen, and worth at least one thousand pounds, proclamation money, of real and personal estate within the same county; that, at the same time, each county shall also choose three members of assembly; *provided*, that no person shall be entitled to a seat in the said assembly, unless he be and have been, for one whole year next before the election, an inhabitant of the county he is to represent, and worth five hundred pounds, proclamation money, in real and personal estate in the same county; that, on the second Tuesday next after the day of election, the council and assembly shall separately meet; and that the consent of both houses shall be necessary to every law, provided, that seven shall be a quorum of the council for doing business; and that no law shall pass, unless there be a majority of all the representatives of each body personally present and agreeing thereto; *provided, always*, that if a majority of the representatives of this province, in council and general assembly convened, shall, at any time or times hereafter, judge it equitable and proper to add to or diminish the number or proportion of the members of the assembly for any county or counties in this colony, then, and in such case, the same may, on the principles of more equal representation, be lawfully done, anything in this charter to the contrary notwithstanding; so that the whole number of representatives in assembly shall not, at any time, be less than thirty-nine.

IV. That all inhabitants of this colony, of full age, who are worth fifty pounds, proclamation money, clear estate in the same, and have resided within the county, in which they claim a vote, for twelve months immediately preceding the election, shall be entitled to vote for representatives in council and assembly; and also for all other public officers that shall be elected by the people of the county at large.

V. That the assembly, when met, shall have power to choose a

speaker, and other their officers; to be judges of the qualifications and elections of their own members; sit upon their own adjournments; prepare bills to be passed into laws; and to empower their speaker to convene them, whenever any extraordinary occurrence shall render it necessary.

VI. That the council shall also have power to prepare bills to pass into laws, and have other like powers as the assembly, and in all respects be a free and independent branch of the legislature of this colony; save only, that they shall not prepare or alter any money bill, which shall be the privilege of the assembly; that the council shall, from time to time, be convened by the governor or vice president, but must be convened at all times when the assembly sits; for which purpose, the speaker of the house of assembly shall always, immediately after an adjournment, give notice to the governor, or vice president, of the time and place to which the house is adjourned.

VII. That the council and assembly, jointly, at their first meeting, after each annual election, shall, by a majority of votes, elect some fit person, within the colony, to be a governor for one year, who shall be constant president of the council, and have a casting vote in their proceedings; and that the council, themselves, shall choose a vice president, who shall act as such in the absence of the governor.

VIII. That the governor, or, in his absence, the vice president of the council, shall have the supreme executive power, be chancellor of the colony, and act as captain-general and commander-in-chief of all the militia, and other military force in this colony; and that any three or more of the council shall, at all times, be a privy council to advise the governor in all cases where he may find it necessary to consult them; and that the governor be ordinary or surrogate-general.

IX. That the governor and council (seven whereof shall be a quorum) be the court of appeals in the last resort in all causes of law as heretofore; and that they possess the power of granting pardons to criminals after condemnation, in all cases of treason, felony or other offenses.

X. That captains, and all other inferior officers of the militia, shall be chosen by the companies in the respective counties; but field and general officers, by the council and assembly.

XI. That the council and assembly shall have power to make the great seal of this colony, which shall be kept by the governor, or in his absence, by the vice president of the council, to be used by them as occasion may require; and it shall be called the great seal of the colony of New Jersey.

XII. That the judges of the supreme court shall continue in office for seven years, the judges of the inferior court of common pleas in the several counties, justices of the peace, clerks of the supreme court, clerks of the inferior courts of common pleas and quarter sessions, the attorney-general and provincial secretary shall continue in office for five years, and the provincial treasurer shall continue in office for one year; and that they shall be severally appointed by the council and assembly in manner aforesaid, and commissioned by the governor, or, in his absence, by the vice president of the council; *provided always*, that the said officers severally shall be capable of being re-appointed at the end of the terms severally before limited; and that any of the said officers shall be liable to be dismissed, when adjudged guilty of misbehavior by the council, on an impeachment of the assembly.

XIII. That the inhabitants of each county, qualified to vote as aforesaid, shall, at the time and place of electing their representatives, annually elect one sheriff, and one or more coroners; and that they may re-elect the same person to such offices, until he shall have served three years, but no longer; after which three years shall elapse before the same person is capable of being elected again. When the election is certified to the governor or vice president, under the hands of six freeholders of the county for which they were elected, they shall be immediately commissioned to serve in their respective offices.

XIV. That the townships, at their annual town meetings for electing other officers, shall choose constables for the districts respectively; and also three or more judicious freeholders of good character, to hear and finally determine all appeals relative to unjust assessments in cases of public taxation; which commissioners of appeal shall, for that purpose sit at some suitable time or times to be by them appointed, and made known to the people by advertisements.

XV. That the laws of this colony shall begin in the following style, viz.: *Be it enacted, by the Council and General Assembly of this colony, and it is hereby enacted by the authority of the same.* That all commissions, granted by the governor or vice president, shall run thus: "The colony of New Jersey to A. B., &c., greeting;" and that all writs shall likewise run in the name of the colony; and that all indictments shall conclude in the following manner, viz.: "Against the peace of this colony, the government and dignity of the same."

XVI. That all criminals shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are or shall be entitled to.

XVII. That the estates of such persons as shall destroy their own

lives shall not, for that offense, be forfeited; but shall descend in the same manner as they would have done had such persons died in a natural way; nor shall any article, which may occasion accidentally the death of any one, be henceforth deemed a deodand, and in anywise forfeited on account of such misfortune.

XVIII. That no person shall ever within this colony be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatsoever, compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person within this colony, ever be obliged to pay tithes, taxes or any other rates, for the purpose of building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately or voluntarily engaged himself to perform.

XIX. That there shall be no establishment of any one religious sect in this province in preference to another; and that no protestant inhabitant of this colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that all persons, professing a belief in the faith of any protestant sect, who shall demean themselves peaceably under the government as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the legislature, and shall fully and freely enjoy every privilege and immunity enjoyed by others their fellow-subjects.

XX. That the legislative department of this colony may, as much as possible, be preserved from all suspicion of corruption, none of the judges of the supreme or other courts, sheriffs, or any other person or persons possessed of any post of profit under the government, other than justices of the peace, shall be entitled to a seat in the assembly; but that, on his being elected and taking his seat, his office or post shall be considered as vacant.

XXI. That all the laws of this province, contained in the edition lately published by Mr. Allinson, shall be and remain in full force until altered by the legislature of this colony (such only excepted as are incompatible with this charter), and shall be, according as heretofore, regarded in all respects by all civil officers, and others, the good people of this province.

XXII. That the common law of England, as well as so much of the statute law, as have been heretofore practiced in this colony, shall still remain in force, until they shall be altered by a future law of the

legislature; such parts only excepted, as are repugnant to the rights and privileges contained in this charter; and that the inestimable right of trial by jury shall remain confirmed, as a part of the law of this colony, without repeal, forever.

XXIII. That every person, who shall be elected as aforesaid, to be a member of the legislative council, or house of assembly, shall, previous to his taking his seat in council or assembly, take the following oath or affirmation, viz.: "I, A. B., do solemnly declare, that as a member of the legislative council or assembly (as the case may be) of the colony of New Jersey, I will not assent to any law, vote, or proceeding, which shall appear to me injurious to the public welfare of said colony; nor that shall annul or repeal that part of the third section in the charter of this colony, which establishes, that the elections of members of the legislative council and assembly shall be annual; nor that part of the twenty-second section in said charter, respecting the trial by jury; nor that shall annul, repeal, or alter any part or parts of the eighteenth or nineteenth sections of the same." And any person or persons, who shall be elected as aforesaid, is hereby empowered to administer to the said members the said oath or affirmation.

Provided always, and it is the true intent and meaning of this congress, that if a reconciliation between Great Britain and these colonies should take place, and the latter be again taken under the protection and government of the crown of Great Britain, this charter shall be null and void, otherwise to remain firm and inviolable.

In Provincial Congress, New Jersey
Burlington, July 2d, 1776

By order of congress,

SAMUEL TUCKER, *President.*

Extract from the minutes.
WILLIAM PATERSON, *Secretary.*

[From the *Sussex Register*
January 15, 1844]

GOVERNOR'S MESSAGE TO THE LEGISLATIVE COUNCIL AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY:

"In compliance with what seems to be the expressed will of the people, you have taken such measures for the amendment of the constitution of the state, as to require no aid or advice, perhaps, from me. You will allow me, however, to remind you, that the formation or alteration of the fundamental law of a state, is the province of the people in their highest sovereign capacity, and not the duty of the legislature, who are delegated to act in obedience to that fundamental law.

The same voice that asks a change of the constitution, asks that change through the medium of a convention; and instructs us to fix by law the time, place and manner of forming it. A law, therefore, calling a convention of a suitable number of delegates, at as short a time and little expense, as the importance of the measure will justify, I believe to be both proper and necessary. If the will of the people has been misunderstood, they can so express it by instructions to their delegates. I commend the subject to your early consideration, and prompt and efficient action."

[The Council
Feb. 9, 1844]

"The bill providing for the election of delegates to revise the constitution . . . was then . . . called up on its final passage, and read, and on the question, Shall this bill pass? it was decided in the affirmative [13 to 3. On February 21 the Assembly passed the bill by 36 to 16].

STATE OF NEW JERSEY

AN ACT to provide for the election of delegates to a convention, to prepare a constitution for the government of this state, and for submitting the same to the people thereof, for ratification or rejection.

SEC. I. BE IT ENACTED *by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same,* That an election for delegates, to meet in convention to frame a constitution for the government of this state, shall be held in the several counties of this state, on the eighteenth day of March next, at the places where the last annual election for township or city officers were held in the several townships or cities in this state; and that the said election shall be conducted and held by the same officers who held the last annual election for members of the legislature, except in those cases where new officers shall be elected prior to the eighteenth day of March next; and, in that case, said election shall be held by such newly-elected officers, and shall, in all respects, be conducted, as nearly as may be, according to the law regulating the annual state election that may be in force on the said eighteenth day of March; *provided,* that every white male citizen of the United States, above the age of twenty-one years, who shall have resided within this state for one year next preceding the said election, and shall be an actual resident of the township or ward where he offers to vote, and in the county where he claims to vote, for three months next preceding such election, shall be entitled to vote for delegates to said convention.

SEC. II. *And be it enacted,* That the number of delegates to be chosen to such convention, by virtue of this act, shall be equal to the number of members of the General Assembly which the respective counties, at the time of such election, may be authorized by the then existing laws to elect, and shall be chosen in and by the respective counties.

SEC. III. *And be it enacted,* That each voter shall give his vote by a single ballot, which shall be a paper ticket, on which shall be written or printed, or partly written and partly printed, the name or names of the person or persons for whom the voter intends to vote; and no ballot shall contain a greater number of names of delegates than that to which the county where such ballot is cast is entitled.

SEC. IV. *And be it enacted,* That the votes at such election shall be

canvassed, and the result certified by the same officers, according to the directions, as nearly as may be, of the laws regulating the election of members of the state legislature which shall be in force on the eighteenth day of March.

SEC. V. *And be it enacted,* That in the absence of any of the officers of said elections, such vacancy or vacancies shall be filled in the manner provided by the general election laws of this state.

SEC. VI. *And be it enacted,* That the delegates, so chosen as aforesaid, shall assemble at the State House, in Trenton, on the fourteenth day of May next: they shall be the judges of the qualifications, election, and returns of their own members; shall have power to choose a president and secretary, and all other necessary officers, and make such rules and regulations for the government of the convention as a majority of the delegates shall approve; and, before entering upon the discharge of their duties under this act, they shall severally take an oath or affirmation to support the constitution of the United States, and to perform the duties of their offices honestly and faithfully; which oath or affirmation shall be administered by the governor, or person administering the government of this state, or, in his absence, by the secretary of this state for the time being.

SEC. VII. *And be it enacted,* That when said convention shall have agreed upon a constitution to be submitted to the people of this state, they shall cause the same to be engrossed, and signed by the president and secretary, and delivered to the governor, or person administering the government of this state, under whose direction it shall be filed in the office of the secretary of this state.

SEC. VIII. *And be it enacted,* That there shall be paid to each member of the said convention the sum of two dollars per day, and to the president thereof, one dollar in addition, for each and every day they shall attend the sitting of said convention; and to each member of said convention, the further sum of two dollars for every twenty miles of the estimated distance, by the most usual route, between his place of residence and the seat of government, in going and returning, on a certificate, to be produced to the treasurer of this state, expressing the sum due and the number of days and miles, signed by the president of said convention; and the secretary and other officers of said convention shall receive such pay as a majority of said convention shall think right and proper: the contingent expenses of the convention shall be paid by the treasurer, on the warrant of the presiding officer.

SEC. IX. *And be it enacted,* That, for the purpose of ascertaining the sense of the people, as to the adoption or rejection of the constitu-

tion agreed upon by said convention, an election shall be held in the several counties of this state, on the second Tuesday in August next; and every person qualified to vote for delegates to the convention authorized by this act shall be entitled to vote at such election.

SEC. X. *And be it enacted*, That the said last mentioned election shall, in all respects, be conducted according to the law then in force regulating the election of members of the state legislature, excepting as herein otherwise provided, and shall be held under the direction of the officers appointed to hold and conduct the next annual state election, and at the places where the election for delegates shall have been holden under this act.

SEC. XI. *And be it enacted*, That the voting at said election shall be by ballot: and it shall be the duty of the officers conducting such election to receive tickets, written or printed, or partly written and partly printed, from citizens entitled as aforesaid to vote at said election, and to deposit them in a box provided for that purpose; the ballots of those persons voting for the adoption of the said constitution shall contain the word "Constitution," and those against its adoption the words "No Constitution": and in case a majority of all the votes cast shall be given in favour of the adoption of the constitution, so as aforesaid submitted, it shall become and be declared the constitution of the state.

SEC. XII. *And be it enacted*, That it shall be the duty of the officers of the said last mentioned election, in the several townships and wards of any city of this state, having first carefully estimated the number of votes given for or against the adoption of the said constitution, to make out duplicate returns thereof, in words at length, and not in figures only, to be signed by said officers, one of which shall be deposited in the clerk's office of the proper county, and the other sealed up, directed, and transmitted, by mail or otherwise, to the governor, or person for the time being administering the government of this state, at the city of Trenton; which said return, and duplicate thereof, shall be signed, deposited, sealed up, directed, and transmitted as aforesaid, within five days after the close of the said last mentioned election: and in case no return shall have been received from any township or townships, ward or wards of any city corporate, by the governor, or person administering the government of this state, within ten days after the expiration of the time herein before prescribed, it shall be the duty of the governor, or person administering the government of this state, to send an express or expresses to procure such deficient return or returns, and to take such other means and measures as he may deem necessary for that purpose.

SEC. XIII. *And be it enacted*, That it shall be the duty of the governor, or the person administering the government of the state, within ten days after receiving the returns of the last mentioned election, to lay them before a privy council, to be by him summoned for that purpose, in the State House in the city of Trenton; and, after casting up the whole number of votes given in the state at the said last mentioned election, the said governor, or person administering the government of the state, and said privy council, shall proceed to determine whether a majority of the votes are in favour of or against the adoption of the said constitution: and if the governor and council aforesaid shall determine that a majority of the votes were cast in favour of the said constitution, the governor shall issue his proclamation, declaring that the constitution has been adopted by a majority of the votes of the people of this state, and shall direct that an election for such officers as may be required to be elected under and by virtue of the said constitution, shall be held at the time and in the manner prescribed in the said constitution, and take all other necessary measures to carry said constitution into effect.

SEC. XIV. *And be it enacted*, That it shall be the duty of the governor of this state for the time being to issue his proclamation immediately upon the passage of this act, requiring all the persons whose duty it may be to hold and conduct the election authorized by the first section of this act, to attend at the times and places named in this act for holding the said election, and conduct the same according to law.

SEC. XV. *And be it enacted*, That in case one or more of the delegates elected to said convention shall die, remove out of this state, or become disqualified from serving in such convention, then it shall be the duty of the governor of this state for the time being to issue his proclamation, directing an election to be held at such time as he shall therein appoint, to fill such vacancy or vacancies; and that said election shall be conducted, in all respects, as is provided for the election of delegates under this act.

SEC. XVI. *And be it enacted*, That as soon as the said constitution shall have been deposited in the office of the secretary of state, it shall be the duty of the governor of this state for the time being to cause the same to be published in each of the newspapers printed in this state, for the space of six weeks, successively, at least once in each week, for the information of the people.

SEC. XVII. *And be it enacted*, That this act shall take effect upon the passage thereof.

PASSED February 23, 1844.

STATE OF NEW JERSEY

PROCLAMATION

WHEREAS, by an act of the legislature of the state of New Jersey, entitled "An Act to provide for the election of delegates to a convention, to prepare a constitution for the government of this state, and for submitting the same to the people thereof, for ratification or rejection," passed the 23d day of February, A. D. 1844, it is provided—

That an election for delegates, to meet in convention to frame a constitution for the government of this state, shall be held in the several counties of this state, on the eighteenth day of March next, at the places where the last annual election for township or city officers was held in the several townships or cities in this state; and that the said election shall be conducted and held by the same officers who held the last annual election for members of the legislature, except in those cases where new officers shall be elected prior to the eighteenth day of March next; and in that case the said election shall be held by such newly elected officers, and shall, in all respects, be conducted, as nearly as may be, according to the law regulating the annual state election, that may be in force on the said eighteenth day of March—

And that the number of delegates to be chosen to such convention, by virtue of the said act, shall be equal to the number of members of the General Assembly which the respective counties at the time of such election may be authorized by the then existing laws to elect, and shall be chosen in and by the respective counties:

NOW, THEREFORE, I, DANIEL HAINES, governor of the State of New Jersey, in pursuance of the directions of the said act, do hereby give notice to, and require all persons whose duty it may be to hold and conduct the said election, to attend at the times and places named in the said act for holding the said election, and to conduct the same according to law.

****
L.S. *
****

Given under my hand and privy seal, at the city of Trenton, the twenty-third day of February, in the year of our Lord one thousand eight hundred and forty-four.

DANIEL HAINES.

[From the *Monmouth Inquirer*
March 7, 1844]

TO THE PEOPLE OF NEW JERSEY

FELLOW CITIZENS: You are aware that a law has recently been passed by the Legislature of this State, directing an election to be held on Monday the 18th day of March ensuing, for the choice of Delegates to a State Convention, to frame a new Constitution, to be submitted to you for your adoption or rejection.

Whatever differences of opinion may exist on other subjects, all will agree, that it is the duty of every good citizen to embrace the opportunity this law affords of securing from it the most beneficial results. An alteration of the fundamental law which forms the basis of our whole system of government as a state, is a measure which ought to be approached under a deep sense of the high responsibility it involves. Laws are often ephemeral. But Constitutions, if cautiously and wisely framed, may outlive many generations of men, and secure to future ages the institutions and the principles of freedom.

An effort is now being made to establish another Constitution for New Jersey. If this effort is made in the spirit of enlarged and liberal patriotism, evils of the greatest magnitude may be prevented, and all our inestimable rights and privileges as a people may be secured.

Deeply impressed with the importance of the subject, the undersigned, on behalf of the two political parties of this state, have united in this address to their fellow citizens. They have no power of course to speak authoritatively for their respective parties; but in view of the great importance of all parties concurring in fair, honest and zealous effort throughout the State, to do their utmost to secure the best Constitution, they beg leave to submit the following recommendations:

First: That in the selection of Delegates to comprise the Convention, party considerations should be, as far as possible, laid aside, and that an honest effort should be made to secure the services of men whose peculiar fitness for the task of framing a new Constitution will commend them to the confidence of the people, and secure in advance, favorable anticipations of the result of their proceedings.

Second: We recommend to the people of the whole state to hold conventions and select their tickets, so that the Convention may consist of an equal number of Delegates of both political parties, and in order to secure this certainly, we further recommend that the Democratic party nominate their candidates as follows: Bergen, 1; Passaic, 1;

Sussex, 2; Warren, 2; Morris, 2; Hunterdon, 3; Essex, 2; Somerset, 1; Middlesex, 2; Monmouth, 4; Mercer, 1; Burlington, 2; Gloucester, 2; Atlantic, 1; Salem, 2; Cumberland, 1—29.

And that the Whig party nominate their candidates as follows: Bergen, 1; Hudson, 1; Passaic, 1; Sussex, 1; Warren, 1; Morris 2; Hunterdon, 1; Somerset, 2; Middlesex, 2; Monmouth, 1; Mercer, 2; Burlington, 3; Essex, 5; Gloucester, 2; Salem, 1; Cumberland, 2; Cape May, 1—29.

And that each party meet in separate conventions, for the nomination of these candidates but that both conventions in any one county be held on the same day, and in the same town.

Fully persuaded that a new Constitution which shall secure the rights and privileges of all classes of the community can only be obtained by a spirit of patriotic concession and compromise, and that unless sought in this spirit, consequences of great and lasting evil may ensue to us and to posterity, we earnestly commend the above propositions to your consideration, binding ourselves hereby in the most solemn manner to do what in us lies, to carry them honestly, sincerely, and fully into execution.

STACY G. POTTS,
CRISPAN BLACKFAN,
SAMUEL MCCLURG,
} Democratic Central Comm.

JAMES WILSON,
RALPH H. SHREVE,
SAMUEL R. GUMMERE,
JAMES M. REDMOND,
JAMES T. SHERMAN,
} Whig Central Committee.

Here follow the individual names of each Whig and Democratic member of the Legislature; and the recommendation is also signed by: Daniel Haines, I. H. Williamson, Jos. C. Hornblower, Jno. Moore White, Daniel Elmer, James S. Nevius, Ira C. Whitehead, Garret D. Wall, O. S. Halsted, Asa Whitehead, P. D. Vroom, J. W. Scott, Smith Scudder, C. G. McChesney, Wm. P. Sherman, Wm. N. Jeffers, Geo. A. Vroom, John E. Broome, A. Boyles, Ephraim Marsh, Wm. Pennington, Henry W. Green, R. S. Field, W. Thomson, A. O. Zabriskie, J. J. Scofield, Rich. W. Howell, Jos. C. Potts, Abrm. Browning, Wm. D. Cooper, Sam. R. Hamilton, Jas. S. Green, W. A. Leupp, W. Halsted, Jr., O. S. Halsted, Jr., James N. Reading, Chas. Stokes, William Dickey, Chas. Parker, Thos. Arrowsmith.

[In Monmouth County the Democratic Committee broke the compromise and elected five members instead of four.]

The Proceedings

Note

These debates were compiled from three main sources: the official Journal of the Convention, *The Newark Advertiser* and *The Trenton State Gazette*. The small capital superscriptions in the text, J, A and G, precede in each instance the material taken from those respective sources. When there was disagreement among these sources, or between these and other less complete sources which were studied, the basis of the disagreement, if incapable of resolution, is indicated by quoting two or more references. The sources used only once or occasionally are written out in full. The editors at no time tried to read sense into the sources: the newspaper reporters, who in general did a most efficient job, and the clerk of the convention were at times incomprehensible.

The Proceedings

JTRENTON, 14th May, 1844.

G3 o'clock—GOVERNOR HAINES took the chair, and Jthis being the time appointed by law for the meeting of the delegates to a convention to prepare a constitution for the government of this state, and for submitting the same to the people thereof, for ratification or rejection, the following persons, *viz:*

FROM THE COUNTY OF ATLANTIC,

Jonathan Pitney;

FROM THE COUNTY OF BERGEN,

Abraham Westervelt, John Cassedy;

FROM THE COUNTY OF BURLINGTON,

William R. Allen, Jonathan J. Spencer,
John C. Ten Eyck, Charles Stokes,
Moses Wills;

FROM THE COUNTY OF CAMDEN,

Abraham Browning, John W. Mickle;

FROM THE COUNTY OF CAPE MAY,

Joshua Swain;

FROM THE COUNTY OF CUMBERLAND,

Daniel Elmer, William B. Ewing,
Joshua Brick;

FROM THE COUNTY OF ESSEX,

Silas Condit, William Stites,
Joseph C. Hornblower, Elias Vanarsdale,
Isaac H. Williamson, Oliver S. Halsted,
David Naar;

FROM THE COUNTY OF GLOUCESTER,

John R. Sickler, Charles C. Stratton;

FROM THE COUNTY OF HUDSON,

Robert Gilchrist;

FROM THE COUNTY OF HUNTERDON,

Alexander Wurts, Jonathan Pickel,
Peter I. Clark, David Neighbour;

FROM THE COUNTY OF MERCER,

Henry W[illegible] Richard S. Field,
John R. Thomson;

FROM THE COUNTY OF MIDDLESEX,

Moses Jaques, Joseph F. Randolph,
James Parker, James C. Zabriskie;

FROM THE COUNTY OF MORRIS,

Francis Child, Ephraim Marsh,
Mahlon Dickerson, William N. Wood;

FROM THE COUNTY OF MONMOUTH,

Bernard Connolly, Thomas G. Haight,
George F. Fort, Daniel Holmes,
Robert Laird;

FROM THE COUNTY OF PASSAIC,

Elias B. D. Ogden, Andrew Parsons;

FROM THE COUNTY OF SALEM,

Alexander G. Cattell, John [H.] Lambert,
Richard P. Thompson;

FROM THE COUNTY OF SOMERSET,

George H. Brown, Ferdinand S. Schenck,
Peter D. Vroom;

FROM THE COUNTY OF SUSSEX,

John Bell, Joseph E. Edsall,
Martin Ryerson;

FROM THE COUNTY OF WARREN,

Samuel Hibbler, Phineas B. Kennedy,
Robert S. Kennedy,

appeared. [G]The Secretary of State called over the names of the Delegates, who presented their credentials, and were severally sworn, or affirmed—all being present, [J]and took their seats.

The convention then proceeded to the choice of president; when,

On motion of Mahlon Dickerson,

Isaac H. Williamson, of the county of Essex, was unanimously elected.

On motion of Mr. Parsons,

Mr. Dickerson and Mr. Hornblower were appointed a committee to conduct the president to the chair;

Which having been done, the president [G]made the following remarks:——

"Gentlemen of the Convention: I am truly sensible of the high honor conferred upon me by your appointing me to preside over this Convention, and return you my sincere thanks for this proof of your kindness and confidence. The people of New Jersey have confided to our wisdom and prudence, a most important trust, and, in the execution of it, let us prove by the manner in which we will discharge our duties, that we meet as a band of brothers and true Jerseymen, and are animated by a firm determination to prefer the interests and happiness of those we represent to every other consideration.

"I will only add further, that as far as my humble abilities will

permit, I will co-operate with you in any manner calculated to render our services beneficial to the state."

[J]The convention then proceeded to the choice of secretary;

When William Paterson, of the county of Middlesex, was unanimously elected, and, being duly qualified, took his seat.

The convention then proceeded to the choice of assistant secretary;

When Thomas J. Saunders, of the county of Gloucester, and Daniel Dodd, jun., of the county of Essex, were nominated, and upon the convention being called, the following gentlemen voted for Thomas J. Saunders, *viz:*

Mr. Allen, Brick, Browning, Cassedy, Cattell, Child, Clark, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Mickle, Parker, Parsons, Pitney, Randolph, Sickler, Spencer, Stratton, Stokes, Swain, Ten Eyck, R. P. Thompson, Wills, Westervelt, Zabriskie—37.

For Daniel Dodd, jun.:

Mr. Brown, Bell, Condit, Field, Gilchrist, Halsted, Hornblower, Marsh, Naar, Neighbour, Ogden, Pickel, Ryerson, Schenck, Stites, J. R. Thomson, Vanarsdale, Vroom, Wood, Wurts—20.

Thereupon Thomas J. Saunders was declared duly elected, and after being duly qualified, took his seat.

William Napton, being nominated for sergeant-at-arms,

Was declared to be unanimously elected.

Mr. Field offered the following preamble and resolutions:

Whereas, The delegates composing this convention have assembled in pursuance of law to prepare a constitution for the government of the state of New-Jersey;—and whereas, upon the issue of our deliberations may depend, under providence, the welfare and happiness of this and future generations;—and whereas, in view of the solemn and responsible duties devolved upon us, it is meet that we should acknowledge our dependence upon God, and invoke his blessing upon our labours—therefore,

Resolved, That the sittings of this convention be opened every morning with prayer; and that the clergymen of the city of Trenton and its vicinity be invited to officiate upon such occasions.

Resolved, That the secretary be authorized to make the necessary arrangements for carrying into effect the foregoing resolution.

[G]Mr. Stokes, of Burlington, [A]a member of the Society of Friends, [G]felt it his duty, though reluctantly, to oppose this resolution. He felt confident that his excellent friend from Mercer had offered

from the purest motives, and he felt as much as any one the importance of depending upon Divine Providence for aid—and if it could be gained by the resolution, he would be the last to oppose it. But he differed with his friend on that subject. He did not think it necessary for him to enter into a theological disquisition, but he would simply refer to the constitution of New Jersey. This was a strange thing in New Jersey—he did not remember any thing of the kind in her history. The constitution says that no religious denominations should be imposed upon any one, nor should any one be compelled to pay for the support of any particular religion. [A]Mr. Stokes was under the necessity of hoping that this resolution might not pass. He knew and felt his responsibility in the step he was taking. He thought it was opposed to that clause of the Constitution of the State which provides that no person shall be compelled to attend any place of public worship; and he hoped it would be withdrawn.

[G]Mr. Field said it was not his intention to have added one remark in support of the resolution—if its propriety and fitness could not be seen and felt by every one, he had nothing to say. He regretted exceedingly—from the bottom of his heart he regretted that the gentleman from Burlington could not see its propriety—but he sincerely hoped the gentleman was the only one. There was only one remark of the gentleman from Burlington, to which he could reply. Is it true that the constitution of New Jersey forbids the acknowledging of a Creator and the offering of supplications and prayers to him? If it is true, then he saw another, an insuperable objection to the many already urged before the people, against the old constitution, that it should be destroyed. But he was happy to say, this was not so. [A]My friend must pardon me for saying it, but I think he has not read the Constitution aright. [G]But he would forbear—he dare not trust himself upon this question. It was no question for discussion in this Hall.

After some other remarks from Mr. Stokes, Mr. Elmer, of Cumberland, read the 18th section of the Constitution, referred to in the discussion.

Some discussion arose as to the taking of a vote without rules, and Mr. Parker suggested the withdrawal of the resolution, until rules were adopted.

Mr. Randolph, of Middlesex, suggested that the resolution might be disposed of under the general parliamentary law.

Mr. Parker, thought we had better have some rules. How could we take the Ayes and Nays unless we had rules?—He was not opposed to the resolution, but he had thought that such a resolution might be

properly offered in this convention. He did not wish however to infringe upon the rights of any one—and thought it ought not to be pressed. He had heard prayers offered up in Legislative bodies, and it was nothing but form, without sincerity and devotion—some were writing and others talking, and very little good was derived therefrom. He hoped the ayes and nays would not be pressed—he would not like to see them on the Journal. It would show that the gentlemen had opposed the acknowledgment of God by prayer, yet that would not be a fair representation. He hoped the harmony of the convention would not be disturbed by pressing the question.

Mr. Field [temporarily] withdrew his resolution [J]at the request of Mr. Browning, who offered the following:

Resolved, That a committee of five be appointed to consider and report rules for the regulation and government of this convention; and that the rules of the General Assembly of this state, so far as they are applicable to the business of this convention, be adopted by this convention, until otherwise ordered;

Which was read, adopted and

Messrs. Browning, Parsons, Cassedy, Ryerson, and Pickel were appointed said committee.

Mr. Field then renewed the preamble and resolutions offered by him.

Mr. Mickle moved that the same do lie on the table.

[G]Mr. Stokes hoped that his friend from Mercer would allow the members time to reflect.

Mr. Field was willing to do anything—but he never would withdraw that resolution. If it was withdrawn he hoped it never would be offered again. He felt it his duty to offer it, and could not consistently withdraw it. If the gentleman from Burlington would not pray with us, and he hoped he would, he certainly would not deny the privilege to others.

Mr. Stokes said his friend from Mercer misunderstood him, if he supposed he was opposed to invoking the aid of the supreme power; but he thought each one ought to be permitted to pray for himself, and not by proxy.

[A]Mr. R. P. Thompson appealed to his friend from Camden, to withdraw his motion to lay on the table. He thought the question should be met fairly and openly, and he made a personal appeal to his friend—unless some conscientious feelings were concerned—to withdraw his motion.

Mr. Mickle was opposed to the resolutions, and should vote against them, if necessary; but should also vote to lay them on the table.

Mr. R. P. Thompson—I give up, Sir, I thought my appeal would have been acceded to. I differ with both my friends from West Jersey. I am glad these resolutions have been offered—and it will be the proudest act of my life to record my vote in their favor, and against the motion to lay on the table.

Mr. Hornblower advocated the resolutions. He thought the course proposed was not a novel one in this State; that Dr. Witherspoon [during the 1776 Constitutional Convention] and Dr. Hancock had performed similar duties before the Legislature on different occasions in times past.

[J]And, the yeas and nays being demanded, [A]the motion to lay on the table [J]was determined in the negative, as follows, *viz:*

YEAS. Mr. Allen, Dickerson, Fort, Holmes, Jaques, Mickle, Naar, Neighbour, Parker, Sickler, Stokes, Wills—12.

NAYS. Mr. Brown, Browning, Cassedy, Cattell, Child, Clark, Condit, Connolly, Edsall, Elmer, Ewing, Field, Gilchrist, Green, Haight, Halsted, Hibbler, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Odgen, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Spencer, Stites, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Williamson (pr.), Wood, Wurts, Zabriskie—44.

A division of the resolutions being called, was ordered, and the question being on agreeing to the first resolution,

The yeas and nays were demanded, and it was decided in the affirmative, as follows, *viz:*

YEAS. Mr. Allen, Bell, Brown, Browning, Cassedy, Cattell, Child, Clark, Condit, Connolly, Dickerson, Edsall, Elmer, Ewing, Field, Fort, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Spencer, Stites, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Williamson (pr.), Wood, Wurts, Zabriskie—51.

NAYS. Mr. Jaques, Mickle, Naar, Sickler, Stokes, Wills—6.

The preamble and second resolution were then severally adopted, [A]so that the divine blessing will be daily invoked upon the proceedings of the Convention.

[J]On motion of Mr. Parsons,

Ordered, That when this convention adjourns, it will adjourn to meet to-morrow morning at ten o'clock.

Mr. Vanarsdale offered the following resolution:

Resolved, That a committee of nine be appointed to consider and report the manner in which it will be expedient to proceed in the business of this convention.

[A]Mr. Browning thought the resolution a very important one, and that members should have a little time to consider it. Similar resolutions were the occasion of serious debate in the New York, Virginia, and Pennsylvania Conventions.

Mr. Parsons was decidedly in favor of the resolution. He thought it would expedite the business of the Convention very much.

While the subject was under consideration, the Convention adjourned till 10 o'clock tomorrow morning.

[J]WEDNESDAY MORNING, 15th May.

At ten o'clock the convention met, pursuant to adjournment, and was opened with prayer, [A]according to the resolution of yesterday, by Rev. Mr. Hall, of the Presbyterian Church of this city.

Mr. Parsons presented a petition from Phillips & Boswell of Trenton, to be appointed Printers to the Convention.

[J]Which was read, and,

On motion of Mr. R. P. Thompson, was ordered to lie on the table.

Mr. Cassedy offered the following resolution:

Resolved, That a committee of three members be appointed to receive propositions for executing the printing of the convention, and that such committee forthwith report the propositions to the convention for consideration;

Which was read, and ordered to lie on the table.

Mr. Browning, from the committee on rules, made the following report [A](one of which limits all speeches to 30 minutes): [Except for one case noted later, these are the rules as adopted, not as reported. This provision was struck out on Friday morning May 17 and therefore was not included when the journal was printed. Closure was

attempted by calling for the "previous question," but the practice was frowned upon. A now-unknown 17th rule was also struck out May 17 and replaced by the original 18th rule.]

[J]RULES TO BE OBSERVED AS THE STANDING ORDERS OF THE CONVENTION.

1st. A house, to do business, shall consist of a majority of the whole number of delegates; but a less number may meet and adjourn from day to day, and fifteen may call the house, and send for the absent members.

2d. The president shall take the chair every day at the hour to which the convention shall have adjourned on the preceding day, shall immediately call the members to order, and, on the appearance of a quorum, shall cause the journal of the preceding day to be read, that any mistake therein may be rectified. He shall preserve order, prevent personal reflections, and confine members to the question under discussion. He shall decide questions of order, subject to an appeal to the convention on a motion to that effect, made and seconded; and such appeal shall be decided without debate. When two or more members rise at the same time, he shall name him who shall speak first. He may call any member to perform the duties of the chair; but such substitution shall not (except in committee of the whole) extend beyond an adjournment. He shall appoint all committees, unless in special cases, it shall be otherwise ordered by the convention. He shall order the yeas and nays, at the request of any five members, on any question which may arise before the convention.

In case of the absence of the president, a president *pro tempore* may be chosen by a majority of the members present; who, while he so officiates, shall have all the powers, and perform all the duties of the president.

3d. The order of business for each day (after reading and correcting the journal) shall be as follows, *viz:*

1. The presentation of original resolutions, propositions, and other papers.
2. Reports of such committees as shall be ready to report.
3. Business up before the convention, and unfinished at the last adjournment.
4. Special orders of the day.
5. Promiscuous business.

4th. Every member rising to speak, shall address himself to the president; and, while speaking, none shall pass between him and the

chair, or hold discourse with another, or in any way cause interruption or disturbance.

5th. A member shall not speak oftener than twice on the same question without leave, and not the second time, until every other member shall have had an opportunity of speaking.

6th. No member shall absent himself from the house without leave, except in case of sickness or other personal disability; nor shall he refuse to vote on any question, unless excused for special reasons.

7th. Every motion shall be reduced to writing, if the president or any member requests it, and all motions entered on the journal, shall be entered in the names of those who make them. A motion to adjourn shall always be in order (except when a vote is being taken) and shall be decided without debate; and a motion to lie on the table shall also be decided without debate.

8th. When a question is under debate, no motion shall be received but to adjourn, to lie on the table, for the previous question, to postpone, or to commit or amend; which several motions shall have precedence in the order in which they are here arranged.

9th. A question which is divisible, shall at the request of any member be divided, and put separately upon the propositions of which it is compounded; and all questions shall be put in the order in which they are moved, except in cases of amendment and in filling up blanks, when the amendment last proposed, the largest sum, greatest number, longest time and most distant day, shall be first put.

10th. When a question has been once decided, either in the affirmative or negative, it shall be in order for any member who voted with the majority to move a reconsideration thereof, either on the same or the succeeding day; which motion shall require a majority of the whole number of delegates to sustain it.

11th. The previous question shall be in this form, "SHALL THE MAIN QUESTION BE NOW PUT?" It shall be admitted when demanded by a majority of the members present, be decided without debate, and until decided shall preclude all further discussion of the main question; but when ordered it shall not cut off pending amendments.

12th. Any business before the convention may be made the order of a particular day; but it may be postponed, on the day, to some other specified time.

13th. After a motion or resolution is stated by the president, or read by the secretary, it shall be deemed to be in possession of the convention; but may be withdrawn by the mover, at any time before an amendment or decision.

14th. In forming committees of the whole, the president, before he leaves the chair, shall name a member to preside in committee; and the rules and orders of the convention shall be observed therein, so far as they may be applicable, except that the previous question shall not be put. A motion to go into committee, or that the committee rise, shall always be in order, and be decided without debate.

15th. All questions, on which the convention is about to vote, shall be distinctly stated by the president, and put in the following form, *viz:* "*As many as are in favour of (the question) will say aye:*" and after the affirmative is expressed, "*those of a contrary opinion, no.*" If there be doubt, or a division be called for, those in the affirmative will rise first, and after being counted, and having resumed their seats, those in the negative will rise.

16th. No article or provision shall be finally adopted as a part of the constitution, nor shall the constitution be adopted, except by a majority of the whole number of delegates.

17th. Should any particular question or business arise before the convention, to which the adopted rules will not apply then the rules of the General Assembly of this state, or any of them, so far as they will apply, shall govern any such particular question or business; and these rules may be suspended or amended, from time to time, by a majority of the whole number of delegates.

A. BROWNING,
A. PARSONS,
JONATHAN PICKEL,
JOHN CASSEDY,
MARTIN RYERSON,
} *Committee.*

Which was read, and,

On motion of Mr. Hornblower, was ordered to lie on the table and be printed.

Mr. Browning offered the following resolution:

Resolved, That the secretary be directed to have the rules, as reported, printed; and that until some general rule upon the subject of printing be adopted, the secretary procure all such printing to be done as shall be ordered by the convention.

Which was read and adopted.

Mr. Naar offered the following resolutions:

Resolved, For the purpose of giving to the people of the state a correct statement of the acts of this convention, that a competent reporter be employed, whose duty it shall be to make a verbatim report of the proceedings thereof.

Resolved, That a committee of —— be appointed, with authority to engage some suitable person as reporter to the convention, with powers to arrange and determine the compensation of such reporter, provided that such compensation do not exceed the sum of —— per week.

[A]Mr. Randolph thought it would be hardly worth while to report all that is said here, and moved to lay the resolution on the table. Agreed to.

[J]Mr. Cassedy called up the resolution, offered by him this morning, [A]for appointing a committee of three to receive propositions for the printing.

Mr. Hornblower moved an amendment that the Committee shall consist of four, which amendment was accepted by the mover.

Mr. Zabriskie offered an amendment to insert the "current printing," and authorizing the committee to contract for the same to the lowest bidder. Agreed to.

[It then] [J]read as follows:

Resolved, That a committee of four members be appointed to receive propositions for executing the current printing of the convention, and that such committee contract with the lowest bidder for said printing.

The resolution, as amended, was then adopted, and

Messrs. Cassedy, Zabriskie, Child, and Swain were appointed said committee.

Mr. Stites offered the following resolution:

Resolved, That the sergeant-at-arms be authorized to employ an assistant, at a compensation not to exceed seventy-five cents a day;

Which was read and adopted.

On motion of Mr. Parsons,

The convention then proceeded to the consideration of the unfinished business of yesterday afternoon, being the resolution [A]offered by Mr. Vanarsdale for appointing a Committee of nine to consider and report [J]the manner in which it will be expedient to proceed in the business of this convention.

Mr. Ryerson moved to amend, by striking out the word "nine," and inserting "ten;"

Which was agreed to.

[A]Mr. Ewing of Cumberland, said it was with regret that he differed in opinion with gentlemen distinguished for their character and intelligence, but he could not but think the Convention more competent to decide upon its own plan of business than any Committee. He had a great veneration for the old Constitution, and thought it should be taken up section by section, and such amendments made as may be necessary, but he wished the old Constitution retained, and particularly its date. He thought that by raising the proposed Committee, great delay would be caused. The Convention will be without business until the Committee report. Then we may have a majority and a minority report, and the members of the Committee will come into the Convention with their opinions fixed more resolutely. He thought the proper way would be to take up and debate and decide upon every subject fully and fairly. He had a disposition to accommodate himself as far as possible to the wishes of those around him, but he hoped that the old Constitution as far as possible should be retained, which he believed was the oldest Constitution in the world, particularly as far as regards a free and independent people. He thought that such were the wishes and feelings of the people.

[J]Mr. Ewing moved to amend, by striking out all after the word "Resolved," and inserting the following:

"That the convention now proceed to take up the constitution of New Jersey, and to consider its provisions by sections, for the purpose of a free and full consideration and discussion of such alterations and amendments as in their best judgment may be deemed expedient, as drawn from experience, a knowledge of the public sentiment, and in accordance with the best interests of the people of the state."

[A]Mr. Child and Mr. Zabriskie preferred the original resolution.

Mr. Parker preferred that the Constitution should be taken up and discussed in Convention. He thought that few alterations were necessary, and that the proper course would be, to decide upon the amendments which are necessary, and then submit them to a committee to be put in proper shape.

Mr. Randolph was not in favor of the amendment of the gentleman from Cumberland. He said that under the law by which we are assembled, we are sent here to frame a new Constitution, and not to revise the old one, as contemplated in the amendment. He thought it would be better to meet at once the question as to the plan which may be adopted for proceeding in our business, and he offered a resolution as a further amendment, for appointing

A Committee of —— on the Executive,
do. do. Legislative,
do. do. Judiciary;

and also upon certain other subjects.

The President decided that this resolution could not be offered at this time.

Mr. Ewing said the debate was taking the course which he thought it would in bringing out the different plans of members, and he thought would bring us back to his plan—to take up the Constitution as we find it, and make such alterations as we may deem necessary. He thought there should be as little machinery as possible in our proceedings, and preferred that we should go into Committee of the Whole, and discuss openly the great principles which are to come before us.

Mr. Ogden said that the spirit which had dictated the original resolution of the gentleman from Essex, did not intend any disregard or disrespect for the old Constitution. He thought it was mis-understood. It was not intended that the Committee should report a Constitution, but only a general plan in which we shall proceed to perform our duties. He thought this would expedite our business, and that without it, we shall not be able to proceed with system and satisfaction.

Mr. Hornblower and Mr. Condit concurred in preferring the original resolution. They supposed the Committee would be able to report this afternoon.

Mr. P. B. Kennedy thought that by adopting the resolution of the gentleman from Cumberland, we should have a plan immediately and fairly before us, and he should therefore prefer that resolution to the original one.

Mr. Clark thought a great deal of time might be saved by appointing the Committee. Much prolix discussion will be saved, which will otherwise be expended here. All the plans of gentlemen can be submitted to them, and the Convention will have entire control of the labors of the Committee.

[J]And the yeas and nays being demanded, it [Ewing's amendment] was decided in the negative, as follows, *viz:*

YEAS. Mr. Bell, Ewing, Hibbler, P. B. Kennedy, Mickle, Parker, Pickel, Stokes, Swain, Westervelt—10.

NAYS. Mr. Allen, Brick, Brown, Browning, Cassedy, Cattell, Child, Clark, Condit, Connolly, Dickerson, Edsall, Elmer, Field, Fort, Gilchrist, Green, Haight, Halsted, Hornblower, Jaques, Laird, Lambert, Marsh, Naar, Neighbour, Ogden, Parsons, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stites, Stratton, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Williamson (pr.), Wills, Wood, Wurts, Zabriskie—46.

[A]Mr. Field said he felt constrained to move a reconsideration of the vote, by which the number of the Committee should be *nine* instead

of *ten*. He said it was necessary for him to speak plainly on the subject although he wished to do it delicately. The object of the amendment was that the Committee should consist of an equal number from both political parties. He fully appreciated the motives which prompted the amendment, but on reflection he thought it would fetter the choice of the President in selecting the Committee, and would keep continually before the Convention, the very subject which we all wished to avoid, and he was not willing that it should go out to the world that we have so little confidence in the Convention and in each other.

Reconsideration ordered, and *nine* inserted.

The resolution (Mr. Vanarsdale's) was adopted, and Messrs. Vanarsdale, Vroom, Dickerson, Parker, Spencer, J. R. Thomson, Green, Brick and Stokes appointed.

[J]Mr. Browning offered the following resolution:

Resolved, That the secretary of state furnish to this convention a tabular statement of the census of the people of this state in the years 1810, 1820, 1830, and 1840, so arranged as to exhibit the number of free white and free coloured persons, and also the number of slaves at each of the said periods, not only in the whole state, but also in each of the counties of the state.

Which was read, and

On motion of Mr. Zabriskie, ordered to lie on the table.

[A]Mr. Ryerson offered a resolution, that the Secretary procure copies of the present Constitution for each member of the Convention.

Mr. Zabriskie said he was already supplied with a copy and he presumed the members generally were: And as we have set out upon principle of economy, which is contained in the law by which we convened, he hoped we would carry it out, and save all the expense that is possible. Resolution withdrawn.

[J]Mr. Pickel offered the following resolution:

Resolved, That when this convention adjourns, it will adjourn to meet this afternoon at three o'clock, and that that be the hour of afternoon sittings, until otherwise ordered.

Which was read, and, pending the consideration thereof,

The convention adjourned to this afternoon, at four o'clock.

[J]At four o'clock the convention met, pursuant to adjournment.

Mr. Vanarsdale, from the committee appointed to consider the manner of proceeding in the business of the convention, made the following report:

The committee appointed to consider and report the manner in which it will be expedient to proceed in the business of this convention, report—

That they have considered of the subject referred to them, and that it is expedient to adopt the following resolutions:

1. *Resolved*, That so much of the constitution to be formed by this convention, as relates to the legislative department, be referred to a committee to report thereon.

2. *Resolved*, That so much thereof as relates to the executive department, be referred to a committee to report thereon.

3. *Resolved*, That so much thereof as relates to the judicial department, be referred to a committee to report thereon.

4. *Resolved*, That so much thereof as relates to the power of appointment to office, and the tenure thereof, be referred to a committee to report thereon.

5. *Resolved*, That so much thereof as relates to the right of suffrage, and qualification of persons to be elected, the time of election, and the meeting of the legislature, be referred to a committee to report thereon.

6. *Resolved*, That so much thereof as relates to future amendments or alterations in the said constitution, be referred to a committee to report thereon.

7. *Resolved*, That so much thereof as is not embraced in the foregoing resolutions, be referred to a committee to report thereon.

8. *Resolved*, That a committee be appointed to inquire into the expediency of adopting a bill of rights and privileges, and to report thereon.

ELIAS VANARSDALE, *Chairman.*

Dated 15th May, 1844.

Which was read and adopted [A]with but one dissenting voice.

[J]On motion of Mr. Green,

Ordered, That the committee on a bill of rights and privileges consist of eight members, and that seven be appointed on each of the other committees above named.

[This] [A]will include every member of the Convention [except Williamson, the president].

The President gave notice that he should announce the committees tomorrow morning.

[J]On motion of Mr. Ryerson, it was

Resolved, That the governor of this state, the ex-governors, the justices of the supreme court, and the attorney general, be allowed seats within the bar of this house.

On motion of Mr. Ryerson, it was

Resolved, That the secretary be authorized to furnish the necessary stationery for the use of the house.

[G]Mr. Ewing said it was highly necessary that the President should have time to appoint the committees, with care, and he therefore moved to adjourn till 10 o'clock tomorrow. Agreed to.

[J]THURSDAY MORNING, 16th May.

At ten o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Starr.

On motion of Mr. Parsons, [who] [A]said the Librarian had not been fit to open the Library, as he had not been publicly requested to do so, [J]it was,

Resolved, That the librarian be requested to open the library daily, for the accommodation of the members of the convention, and that he furnish the members with such books and public documents as they may from time to time require.

The president announced the following committees on the respective parts of the constitution to be formed, pursuant to the resolution authorizing the appointment of the same, *viz:*

On the Legislative Department.—Messrs. Vroom, Ewing, Clark, Stratton, Haight, Gilchrist, Child.

On the Executive Department.—Messrs. Hornblower, R. S. Kennedy, Brown, Pitney, R. P. Thompson, Parsons, Ryerson.

On the Judiciary Department.—Messrs. Vanarsdale, Green, Allen, Ogden, Randolph, Cassedy, Schenck.

On the Appointing Power.—Messrs. Dickerson, Field, Cattell, Browning, Condit, Edsall, Zabriskie.

On the Right of Suffrage.—Messrs. J. R. Thomson, Wurts, Elmer, Halsted, Holmes, Mickle, Wood.

On the Provision for Future Amendments.—Messrs. Brick, Con-

nolly, Sickler, Wills, Neighbour, Westervelt, Hibbler.

On the parts not referred to other committees.—Messrs. Spencer, Laird, Stites, P. B. Kennedy, Lambert, Marsh, Fort.

On the Bill of Rights—Messrs. Parker, Ten Eyck, Naar, Bel, Pickel, Stokes, Jaques, Swain.

[A]Mr. Naar called up the resolution offered by him yesterday, for procuring a competent reporter, to make a verbatim report of the proceedings and debates of the convention, and for appointing a committee to employ him at not more than —— dollars per week. He said he had offered the resolutions in order that the people of New Jersey, whose delegates we are, shall be informed of what we are doing and of the motives and reasons for our decisions—and that they may be correctly informed, the reports should be made as accurate as possible, and because the future construction of the instrument may depend in a measure, upon the debates which occur here.

Mr. Ogden had thought of another reason, there is a laudable degree of veneration among the people for our old Constitution—and as change may be made in it, which would not at first blush, strike them as necessary, he thought it was proper that they should be informed of our reasons for making those changes.

Mr. Browning concurred in the necessity for a reporter. The Conventions of Pennsylvania and Virginia adopted this plan—and the reports were published and are of great value.

These reports may be of more consequence hereafter than now. It will be remembered that the Congress of the U.S. have expended $30,000 for the reports, made by Mr. Madison, of the Convention which framed the Constitution of the U. S.

Mr. R. S. Kennedy was opposed to the resolutions. He knew this course had been adopted elsewhere. In Pennsylvania the Convention was in session nine months—and he thought that was three months longer than it would have been in session, if there had been no reporter present. The expense too of publishing these reports would be very great.

Mr. Ogden said these resolutions did not contemplate the publication of the reports. They would be filed in the office of the Secretary of State, for general reference, and the Legislature can order them to be published or not as they please.

Mr. Stites offered an amendment that the reporter should be sworn or affirmed—Accepted by the mover. [G]It was afterwards withdrawn at the suggestion of Messrs. Stokes and Field, who were opposed to the multiplication of oaths unnecessarily.

[A]Mr. Parker could not agree in the necessity or propriety of these resolutions. He thought it was not contemplated by the act under which we are assembled. This is not one of the officers that are *necessary* under the act. He also had other objections. It will be a matter of great expense. There are already here several persons at their own expense, whose reports go out daily to the people—and whose reports will be as correct probably as any you can get, and will be read by everybody. But the reports, by whomever they may be made, will be apt to be incorrect. It is unavoidable. He referred to the reports of the House and Senate of the U. S. where corrections are made every day in the reports as published by the reporters.

But he could not agree to one argument which had been offered, that the Constitution was to be construed by what is said by the members of the Convention. No court of record would so construe it. He was opposed to the resolutions and thought they would extend the length of our debates, and of our session.

Mr. R. P. Thompson thought there was sufficient power in the law for the appointment of this officer. We are authorized to appoint a President and Secretary, and *such other officers* as may be necessary —and under that provision, he thought there could be no difficulty. He sincerely hoped the resolutions would pass. He knew that it was very difficult to get proper reports of the debates of Congress. But that arises in part from the peculiar construction of the building, but principally from the bitterness of party feeling, from which we are fortunately exempted here. He too, had a great regard for the old Constitution, and thought the reasoning upon the amendments which might be made, and the opinions of the members of the Convention should be made known to the people, in order to guide them in their future action upon the Constitution.

Mr. Condit thought the reporter should not be sworn to give a *verbatim* report, but only a *faithful* and *accurate* report—which alteration was acceded to by the mover.

Mr. Allen thought the resolution implied that our proceedings will not be kept accurately by our Secretary in the Journal. He should prefer to trust that Journal, rather than a reporter though he was sworn. The reports of the reporter would only give the speeches, in addition to what is contained in the Journal, and if filed in the Secretary's office would be accessible to but few. He thought no practical good would result from the adoption of the resolutions, and should therefore be compelled to vote against them.

Mr. Parker still adhered to the opinion that the act would not

authorize the appointment of a reporter.

Mr. Ewing was at first in favor of the resolutions, but after the discussion which we had heard, he was opposed to them, and thought the appointment was not authorized by the law. He wished his constituents to understand his proceedings here, from his acts and votes —but he should speak with fear and trembling if he thought all the remarks which he should make for the mere purpose of acquiring information, should be handed down to posterity.

Mr. Halsted thought the reasons which had been urged for the adoption of the resolutions had been completely answered. He thought our constituents were thinking men, and would judge of the instrument which we shall form by its nature and effect, and not by the views expressed on this floor by members of the Convention.

Mr. Naar said, if we have a report by a professional reporter, members would be able to justify themselves in the event of injustice being done them by other reporters.

The resolutions were further advocated by Mr. Child, Mr. Schenck, and Mr. Field. He said these debates will be reported, we cannot help it, they will not only be scattered over the State, but they will be handed down to posterity. Is it not important then that our proceedings here shall be correctly reported? I address myself to every member of this body. Are you willing that the remarks which you shall make here, which shall be handed down to your descendants shall be caricatured?—Look at the debates of the Legislature as they are sometimes reported! If I wished to wound deeply the feelings of any man, I would have his remarks caricatured, as they have been in these instances.

One word more. I confess I have a little State pride in having these debates correctly reported. If they are handed down to posterity I desire that they may be creditable to the State of New Jersey. I do not doubt they will be so. I cannot agree in the belief, that our labors here will be of little value. I see no reason why we may not form a Constitution which will be a model for other States and other Countries. The institutions and laws under our form of government are destined to exert an influence far beyond the limits of the Union, and I want the Constitution of New Jersey and the debates in this convention to be looked up to, as well as those of New York and Pennsylvania, as affording a valuable precedent for the consideration of others. It has been asked if these debates will be of any value hereafter? Yes, Sir! I say emphatically, Yes, Sir! Suppose this Constitution lives half a century as I doubt not it will, and a question arises as to the construction of any part of it, they will then be of great value. Language

is continually changing, the meaning of words is changing, and I believe that fifty years hence, $30,000 and more would be freely given for the debates which will occur here.

The debate was further continued at great length.

[The resolutions were] amended, so as to read as follows:

Resolved, For the purpose of giving to the people of the state a correct statement of the acts of this convention, that a competent reporter be employed, whose duty it shall be to make an accurate report of the proceedings and debates thereof.

Resolved, That a committee of —— be appointed, with authority to engage some suitable person as reporter to the convention, with powers to arrange and determine the compensation of such reporter, provided that such compensation do not exceed the sum of —— per week.

The question then being on agreeing to the resolutions, as amended,

A division being called, was ordered; and on the question, shall the first resolution be agreed to,

The yeas and nays were demanded, and it was decided in the negative, as follows, *viz:*

YEAS. Mr. Browning, Cattell, Child, Clark, Connolly, Edsall, Field, Fort, Green, Jaques, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Ryerson, Schenck, Sickler, Stokes, Stratton, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Williamson (pr.), Wood, Zabriskie—28.

NAYS. Mr. Allen, Bell, Brick, Brown, Cassedy, Condit, Dickerson, Elmer, Ewing, Gilchrist, Haight, Halsted, Hibbler, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Parker, Pitney, Randolph, Stites, Swain, Ten Eyck, Westervelt, Wills, Wurts—29.

On motion of Mr. Mickle,

Ordered, That the second resolution be postponed.

The convention adjourned to this afternoon, at three o'clock.

[3 o'clock, Mr. R. P. Thompson moved to take up the second of the two resolutions in relation to a reporter, which resolution was postponed this morning. The motion was agreed to 24 to 18.

Mr. Hornblower moved to reconsider the vote by which the first resolution was disagreed to.

The President, in answer to an inquiry of Mr. Parker, stated that

a vote of two thirds was necessary to reconsider a vote.

Mr. Hornblower said he had made his motion under a misunderstanding. He withdrew it.

Mr. R. P. Thompson moved to strike out all of the second resolution after the word Resolved and insert as follows:

That a committee of three persons be appointed to enquire and report for what sum a competent reporter can be obtained to make an accurate report of the proceedings and debates of this convention.

[A]Mr. Ewing was not satisfied with this method of doing business. The amendment is to the same effect as the resolution which was lost this morning. It was lost after due consideration and discussion, and he thought the minority, though a large one, should yield to the determination of a majority.

Mr. R. P. Thompson had offered the resolution merely to procure information as to the expense of procuring this service to be done. He thought many members voted this morning under the erroneous impression that the reports would cost $2,000—whereas he had been informed that perhaps it would not cost $150 [G]or $200—[A]and he wished merely to obtain correct information upon this point.

Mr. Parker said it was for the same object which was defeated this morning. This amendment is to inquire what it would cost to procure a competent stenographer, and this convention decided, this morning, that they would have no stenographer! That vote has not been re-considered and now remains on the Journal, and now why shall we inquire what the service will cost, when we have decided not to have it performed?

Mr. Naar thought the amendment was perfectly in order, and that the object merely was, to satisfy the doubts of gentlemen, and if they were satisfied as to the expense, he thought probable there would be a large majority in favor of the appointment of a stenographer.

Mr. Wurts thought the argument of the gentleman from Middlesex was irresistible. The House, this morning, decided to have no stenographer, and now it is proposed to inquire what the expense of a stenographer would be. He thought there was a decided conflict, and inconsistency, between the resolutions.

Mr. Field thought differently and

The President decided that the amendment was perfectly in order.

Mr. Condit concurred with the decision. He had but little anxiety as to the fate of the resolution; but his judgment and experience would lead him to think, that the report of these debates would not be productive of good.

Mr. Ewing would have been satisfied with a decision of the resolution this morning in either way, but he did not like this vacillating course of action. It has been effected out of doors, and he had some feeling that that course should not be persisted in.

Mr. Hornblower was sorry to be compelled to rise in his own defence. He explained that he *had* changed his opinions as to the propriety of procuring a reporter. He was not accustomed to form his opinions by intuition, but upon mature deliberation, and upon arguments by both sides.

Mr. Ewing disclaimed any intention to wound the feelings of his friend from Essex. After an acquaintance of thirty years and with a full knowledge of his distinguished abilities and the kindness of his heart, it was far from his intention to say a word that would be unpleasant to him—and if he had done so, he sincerely regretted it.

Mr. Clark should vote against the amendment, upon the ground that unless the object desired could be attained with some degree of unanimity, it had better be let alone. He thought this was an attempt to do indirectly, that which we refused to do directly this morning. Although he agreed with the President as to the point of order, he thought it would be more satisfactory to attain the object by a re-consideration.

[G]Mr. Zabriskie called for the yeas and nays and they were ordered.

The motion was disagreed to as follows:

AYES. Messrs. Browning, Cattell, Child, Connolly, Edsall, Field, Fort, Hornblower, Jaques, Mickle, Naar, Parsons, Pickel, Ryerson, Schenck, Sickler, Stratton, Stokes, R. P. Thompson, Williamson (Pres't), Zabriskie—21.

NAYS. Messrs. Allen, Bell, Brick, Brown, Cassedy, Clark, Condit, Dickerson, Elmer, Ewing, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Neighbour, Parker, Pitney, Randolph, Stites, Swain, Ten Eyck, Vanarsdale, Vroom, Wood, Wurts, Wills, Westervelt—34.

Mr. Parker moved the resolution be dismissed; agreed to.

The President presented a letter from the Rev. John Hall, pastor of the Presbyterian Congregation in this city, offering seats in their church to the officers and members of the Convention, at the religious services which should be performed at the church, during the session of the Convention.

Mr. Ewing moved to adjourn, [J]till to-morrow morning, at ten o'clock [G]in order that the committees might get together. Agreed to.

[J]FRIDAY MORNING, 17th May.

At ten o'clock the convention met, pursuant to adjournment, and was opened with prayer by Rev. Mr. Kidder.

[G]Mr. Wurts offered a resolution to authorize the president of the Convention to admit such and so many stenographers or reporters as he may think proper. Mr. Wurts said that we had adopted a resolution allowing seats within the bar to the judges of the Supreme Court, and it seemed proper, therefore, that this resolution should be adopted respecting the reporters. It was also proper that the Convention should exercise some control over the reporters. The resolution was agreed to.

[A]Mr. Child offered a resolution, that in order to prevent conflicting reports, the committees on the Legislative, Executive and Judiciary Departments and that on the appointing power &c shall meet and confer together, before making their report.

Mr. Hornblower did not see the propriety of this course. The four committees will make a large body, and their discussions may occupy much time. The committee of which he was a member would probably be ready to report this afternoon, and their report would of course be delayed.

Mr. Child said the business of these various committees certainly runs together, and could be better understood and arranged in this committee than when before the house.

Mr. Ewing thought the course was improper. He wished each report to be presented as soon as is ready—and the *principle* which is decided upon the first report will, of course, determine it, if a different principle is proposed in another.

Mr. Parker should oppose the resolution unless the committees should wish it. This committee will consist of one half of the Convention—and he thought much time would be wasted. He thought the business would be perfected much sooner if a single duty was before each committee. Resolution withdrawn.

Mr. R. P. Thompson moved [J]that the use of this hall be granted this evening to Major Tochman, a Polish exile, to address such members of this convention as choose to attend, and the citizens generally, on the wrongs and sufferings of Poland.

[A]Mr. R. S. Kennedy thought it would only open the door for future and continual applications—these will next be one from Ireland—and then from the Sons of Africa.

Mr. Sickler. The Bull is in town, too, and he will want it next! (Laughter).

Mr. Parker had rather the application should be made to the city authorities for the use of the City Hall, which he thought would be the most proper place for the lecture.

Mr. Green said that the gentleman whose name is introduced in the resolution, has a distinguished reputation both in Europe and this country. He has been for some time in this country endeavoring to create an interest in behalf of Poland, and to meet the efforts of the crowned heads of Europe to prejudice that country in the minds of the people of this. [The resolution was adopted.]

[J]Mr. Wills, from a majority of the Committee on Future Amendments, made the following report:

Be it ordained, That if, at any time hereafter, any specific amendment or amendments to the constitution shall 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 making such choice in at least one newspaper of each county, if any be therein; 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, at least three months after being so agreed to by the two houses, 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; provided, that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

JOSHUA BRICK, *Chairman*.

May 16th, 1844.

Which was read, laid on the table, and ordered to be printed.

Mr. J. R. Thomson, from the Committee on the Right of Suffrage, made the following report, *viz:*

The committee to whom was referred the following resolution—

"*Resolved*, That so much thereof as relates to the right of suffrage and qualification of persons to be elected, the time of election, and the

meeting of the legislature, be referred to a committee, to report thereon," beg leave to report:

1st. *On the Right of Suffrage.*

Every white male citizen of the United States of the age of twenty-one years, who shall have been an inhabitant of this state one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elected by the people; *provided*, that no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this state, by being stationed in any garrison, barrack, or military or naval place or station within this state: and no idiot, or insane person, or pauper, or person convicted of the crime of bribery, forgery, perjury, theft, or other offence, for which an infamous punishment is or may be inflicted, shall enjoy the right of an elector.

2d. *On the Qualification of Persons to be Elected.*

No person shall be a member of the Legislative Council who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the state for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the state for two years, and of the county for which he shall be chosen one year, next before his election; *provided*, that no person shall be eligible as a member of either house of the legislature who shall not be entitled to the right of suffrage.

3d. *On the time of Elections and the Meeting of the Legislature.*

The members of the Legislative Council and General Assembly shall be elected, yearly and every year for ever, on the second Tuesday of October, and shall meet, separately, on the first Tuesday in January next after the said day of election.

JNO. R. THOMSON, *Chairman.*

Dated May 17th, 1844.

Which was read, laid on the table, and ordered to be printed.

On motion of Mr. Ryerson,

The convention then proceeded to the consideration of the report of the committee on the rules to be observed as the standing orders of the convention, during its session;

Which was read, and,

The first rule being under consideration, the same was adopted without amendment.

The second rule being under consideration, [A]considerable debate was excited as to the number of members to second the call of the Ayes and Noes (but the number of five, reported by the committee, was finally agreed to) and as to the method of calling a presiding officer to the chair, in case of the absence of the President; [J]the same was amended in the last clause, by striking out the word "shall," and inserting "may"; and [illegible] as amended, was agreed to.

[A]The rule was [illegible]its each speech to 30 minutes being under consideration. [According to the Journal this section, part of the 5th rule, was not discussed until the afternoon.]

Mr. Parker moved an amendment that it shall not extend to Committees of the whole.

Mr. Hornblower moved a further amendment, to strike out the words which limit the time of debate—He said he made the motion seriously and upon reflection.

He alluded to the importance of the business upon which we are assembled, and hoped the debate would be unreserved and unlimited. He had in his eye at this time, distinguished gentlemen upon this floor who could not with intelligence and convenience to themselves, make a full argument upon subjects which may come up in half an hour. He therefore moved to strike out these words.

Mr. Child was in favor of the later amendment.

Mr. Browning said he was instructed by the committee who reported the rules to say this rule was not reported unanimously. He was opposed to it himself. He thought it would shackle some of those whose arguments would be not only instructive but delightful to us to hear. He found no precedent for it in the deliberations of other similar conventions—but on the contrary, he found precedence against it. He hoped the limit would not be adopted.

Mr. Ryerson said the rule was adopted, after debate by the committee with but one dissentient—and if found necessary can be altered hereafter by a mere majority.

Mr. Field thought the rule would be undignified, in a body assembled to deliberate upon the great fundamental questions which will come before us.

Mr. R. P. Thompson also opposed any gag-law, and the amendment was agreed to, so that the limiting words were stricken out.

[J]The third rule having been read,

Pending the consideration thereof,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met.

The president presented a communication from Maj. George Tochman, returning thanks for the resolution granting him the use of the hall.

The convention proceeded to the consideration of the unfinished business of the morning, being the report of the committee on rules.

The third rule being under consideration, the same was adopted without amendment.

The fourth rule having been read and considered, the same was agreed to without amendment.

The fifth rule being under consideration, the same was amended by striking out the words "nor more than thirty minutes at any one time," and, as amended, was adopted.

The sixth rule having been read and considered, the same was agreed to without amendment.

The seventh rule being under consideration, the same was amended by striking out the words "not on paper," and, as amended was adopted.

The eighth rule being under consideration, the same was amended, so as to read as follows:

"8th. When a question is under debate, no motion shall be received, but to adjourn, to lie on the table, for the previous question, to postpone, or to commit or amend; which several motions shall have precedence in the order in which they are here arranged";

And as amended, was adopted.

The ninth rule being under consideration, the same was amended by striking out the words "longest time"; [These words appear in the rules printed in the Journal, while others were printed as amended.]

And as amended, was adopted.

The tenth rule having been read and considered, the same was agreed to without amendment.

The eleventh rule being under consideration, the same was amended, by adding thereto the following: "but when ordered, it shall not cut off pending amendments";

And as amended, was adopted.

The twelfth and thirteenth rules having been read and considered, the same were severally agreed to, without amendment.

The fourteenth rule, being under consideration, was amended by inserting, after the word "motion," the words "to go into committee, or";

And as amended, was adopted.

The fifteenth and sixteenth rules were read and considered, and agreed to without amendment.

The seventeenth rule being under consideration, the same was ordered to be stricken out.

The eighteenth rule being under consideration, the same was amended, by inserting before the word "amended," the words "suspended or"; and, as amended, the same was adopted as rule 17.

The report and rules, as amended, were then collectively adopted.

Mr. Cassedy, from the Committee on Printing, made the following report, *viz:*

The Committee on Current Printing respectfully report:

That Phillips and Boswell, printers, of this city, having offered to execute the current printing of the convention on lower terms than those offered by any other person, the committee have therefore considered it their duty, under the resolution, to accept the same.

JOHN CASSEDY,
FRANCIS CHILD,
JOSHUA SWAIN,
JAMES C. ZABRISKIE,
} *Committee.*

[A]Mr. Parsons moved the report be accepted—agreed to.

[J]Mr. Child offered the following resolution:

Resolved, That a vice president of convention be appointed, whose duty it shall be to officiate in the absence, or at the request of the president; and who, while he so officiates, shall have all the powers, and perform all the duties of the president;

Which was read, and ordered to lie on the table.

Mr. Wood offered the following resolution:

Resolved, That the seventeenth rule of the convention be amended, by striking out the words "these rules";

Which was read, and ordered to lie on the table.

Mr. Hornblower called up the resolution relative to obtaining census documents.

[A]Mr. Ryerson moved to strike out 1810-20—agreed to, and resolution adopted.

[J]On motion of Mr. Wills, it was

Ordered, That when this convention adjourns, it will adjourn to meet on Monday afternoon, at three o'clock.

[A]Mr. Hornblower presented a report from the committee on *The Executive Department*.

He said that the committee unanimously concurred in the report as the basis of that branch of our business—but did not wish to commit themselves to it in all its details. He said in making so early a report the committee were much indebted to the labors of Mr. Thompson of Salem, their Secretary.

[J]THE EXECUTIVE DEPARTMENT.

I. The executive power of the state shall be vested in a governor.

II. The governor shall be elected by the legal voters of this state, at the times and places where they shall respectively vote for members of the state legislature: the returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the secretary of state, who shall open and publish them, in the presence of the members of both houses of the legislature, on the day next after the time appointed by law for the meeting of the legislature, or as soon thereafter as a quorum of both houses shall be present: the person having the highest number of votes shall be the governor; but if two, or more, shall be equal and highest in votes, one of them shall be chosen governor by the vote of the majority of the members of both houses, in joint-meeting: contested elections for the office of governor shall be determined by a committee, to be selected from both houses of the legislature, and to be formed and regulated in such manner as the legislature shall direct by law.

III. The governor shall hold his office for three years from the —— day of January next ensuing his election; and he shall be ineligible to that office for three years next after his term of service shall have expired.

IV. The governor shall be not less than thirty years of age, and shall have been for twenty years, at least, a citizen of the United States, and a resident of this state seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this state.

V. The governor shall, at stated times, receive for his services a compensation, which shall be neither increased nor diminished during the period for which he shall have been elected.

VI. He shall be the commander-in-chief of all the military and naval forces of the state: he shall have power to convene the legislature, or the Senate only, whenever in his opinion, public necessity

requires it: he shall communicate by message to the legislature, at the opening of each session, and at such other times as he may deem necessary, the condition of the state, and recommend such measures as he may deem expedient: he shall take care that the laws be faithfully executed, and grant, under the seal of the state, commissions to all such officers as shall by law be required to be commissioned.

VII. Every bill which shall have passed both houses shall be presented to the governor; if he approve, he shall sign it, but if he shall not approve, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to consider it: if after such reconsideration, a majority of the whole number of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by a majority of the whole number of that house, 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, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

VIII. No member of Congress, or person holding an office under the United States, or this state, shall exercise the office of governor; and in case the governor, or person administering the government of this state, shall accept any office under the government of the United States, or of this state, his office of governor shall thereupon be vacant.

IX. The governor shall have power to remit fines and forfeitures, and grant reprieves, to extend until the rising of the court of pardons next after the conviction; but this power shall not extend to cases of impeachment.

X. The governor, chancellor, and the justices of the supreme court shall constitute a court of pardons; and a majority of the court may grant pardons after conviction, in all cases except impeachment.

XI. The governor, and all other civil officers under this state, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend farther than to removal from office, and disqualification to hold any office of honor, trust, or profit under this state; the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, or punishment, according to law.

XII. In case of the death, resignation, or removal from office of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the Senate for the time being, until another governor shall be duly qualified; but in such case another governor shall be chosen at the next election for members of the state legislature, unless such death, resignation, or removal shall occur within two months immediately preceding such next election, in which case a governor shall be chosen at the second succeeding election for members of the state legislature.

XIII. In case of the impeachment of the governor, his absence from the state, or inability to discharge the duties of his office, the powers, duties, and emoluments of the office shall devolve upon the president of the Senate for the time being, until the governor, absent or impeached shall return or be acquitted, or until the disqualification or inability shall cease, or until a new governor be elected.

XIV. In case of a vacancy in the office of governor, from any other cause than those herein enumerated, or in case of the death of the governor elect before he is qualified into office, the Legislature shall have power to provide by law for filling such vacancy.

JOS. C. HORNBLOWER, *Chairman*;
ROBERT S. KENNEDY,
JONATHAN PITNEY,
GEO. H. BROWN,
A. PARSONS,
MARTIN RYERSON,
R. P. THOMPSON.

[G]Mr. Hornblower moved the report lie on the table and be printed. Agreed to.

The Secretary, Mr. Paterson, asked leave of absence till Wednesday morning. Granted.

[A]Mr. Ogden moved that when the Convention adjourns it will adjourn to meet again on Monday afternoon at 3 o'clock.

It appearing that the reports already presented would not be printed before that time—that no other committees would be ready to report, or progress with their business, and that the preliminary steps of organization were completed. The resolution was adopted. Adjourned.

[J]MONDAY AFTERNOON, 20th May.

At three o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Reed.

[G]Mr. Child adverted to the fact that he was reported in the newspapers as having opposed the motion to grant the use of the hall to Major Tochman, for the purpose of lecturing on Poland. He explained that he had objected to the motion, only because he doubted the right of the Convention to grant the use of the room, for any purpose, or if the right was conceded, that it would establish a precedent which might hereafter place the Convention in an awkward or unpleasant situation; and not from any want of respect to the gentleman in whose behalf the application was made, or of sympathy for Poland.—For the people of Poland he had always felt much sympathy. No one, except one of her own citizens, could have taken a deeper interest in her late struggle for independence. No one could have more regretted its unfortunate result. No one was more anxious that she might yet establish her nationality.

No petitions, resolutions, nor memorials were presented.

Mr. Pickel moved, therefore, to adjourn, [J]till tomorrow morning, at ten o'clock, [G]in order that the Committees might devote themselves to their duties. Agreed to.

[J]TUESDAY MORNING, 21st May.

At ten o'clock the convention met, pursuant to adjournment. [A]Prayer by Rev. Mr. Young of the Baptist Church.

Mr. Hornblower rose and said:

Mr. President—

I rise to a question of privilege—not my own, sir, but the privilege of every member of this honorable body.

There are, sir, upon the floor of this house, within the bar, and accommodated with seats and tables, several persons in the character of Reporters. They occupy those places sir, by no other tenure than

the courtesy of this Convention—nay, sir, if they have any right to be there at all, it is because, in the exercise of the power vested in you by this body, you have given them permission to occupy the places they now do.

In admitting those persons to seats within the bar we have treated them like gentlemen; and we have certainly a right to expect, they will treat us as such: and yet sir, I hold in my hand a newspaper, edited, I am told by one of the favoured persons I have alluded to, in which I am not only grossly misrepresented, but caricatured, sneered at and held up to ridicule not only as member of this Convention, but also in my Judicial capacity. We admitted those persons within the bar, in order that they might with more facility and greater accuracy, report our proceedings to the people: and not to issue from their desks here, scurrility and sneers and abuse of the very members of this house—and then come back and impudently stare them in the face, while they are addressing the Convention.

But sir, it is not of newspaper abuse, that I complain—that is nowadays, the lot of every honest man. It is but a day or two since, I heard a worthy and excellent member of this Convention from Hunterdon advert to an insulting and libellous publication respecting himself in one of the papers, and I sympathized with him at the time, but little thought that I was to be the next victim. *No sir*, it is not of newspaper abuse that I complain. If that is the aliment of hireling Editors, let them feed and fatten upon it; but then let them keep outside of this bar, and not sit here to insult us to our face.

But sir, this is not all—I have a graver complaint to make against the editor. It is an attempt on his part, through the medium of the press, to throw the apple of discord and party strife into this assembly. He has paraded two of my worthy and honorable colleagues from Essex (for which I know they do not thank him) as standing in honorable contrast with myself and the other delegates from that County.

(Here, at Mr. H's request, the article complained of was read by the Secretary, from the Newark Morning Post of Friday last, signed S.G.A.)

"Trenton, Thursday, May 16.

The debate on Mr. Naar's resolutions for employing a reporter to take down the debates, was spirited and able, and showed us something of the materials of which the convention is composed. It occupied the House for three hours this morning, and a couple more this afternoon. It was urged on one side that the debates would be of immense impor-

tance in all future time to illustrate the views of the convention—that they were necessary to understand the votes of members—that they would influence and settle public opinion in favor of the constitution—that they would be living monuments of the spirit of the convention, and would add to the dignity and glory of the state. On the other side objections were made to the expense, and it was contended that the reports could not be made with accuracy, and that they were entirely unnecessary. I regret to say that all the Essex delegation voted against the resolution except Naar and Vanarsdale. Judge Hornblower had been in favor of it, as he declared, but with a vacillation which speaks little for the steadiness of his mind, he wheeled about some two or three times and finally voted against it. Messrs. Field, Green, Browning, Ogden, Naar, R. P. Thompson, and others, spoke with eloquence and force in favor of the resolutions, and set forth the importance of their passage with a strength and conclusiveness which seemed irresistible but they failed, it seems, to convince the majority.

I have given you the yeas and nays on this important proposition, that your readers may see by whose votes posterity has been deprived of the debates of this convention. In the afternoon the matter was brought up by Mr. R. P. Thompson, who made a good speech in its favor.—Judge Hornblower, who voted against it in the morning, moved a reconsideration, but as the rules required two thirds to reconsider, he withdrew his motion. His unsteadiness called forth some animadversions, to which he replied in a curious, and, as I understand, a characteristic speech. He said he was originally against it—that on conversing with the mover, he had changed his mind, and come to the conclusion that the course was a proper one—that on listening to the first part of the debate, he recurred to his original opinion against it—that the eloquent speech of the gentleman from Mercer (Mr. Green) had again unsettled his mind, and he had moved to lay it on the table till he could bestow on it further consideration—that this motion failing, he came to the conclusion to vote against it, and that he moved a reconsideration out of respect for the large minority who had voted for it. What a catalogue of changes! If ever I am tried for my life before his honor, I shall be very careful to procure counsel who are able to make the "worse appear the better reason." S.G.A.

"(After which Mr. H. proceeded:)

Now sir, we must put a stop to this vile effort, or the harmony and kind feeling so happily prevalent in this Convention will take their leave of us.

If legislative assemblings which are too often made political meet-

ings, choose to tolerate such personal abuse from the pens of their privileged reporters, so be it. But we are not a legislative nor a political body. No sir; no sir, thank God, we have not assembled here as a body of political gladiators. We have come not to seek popularity and political elevation—but for nobler, higher and holier purposes. The heads of many of us have been already silvered over by the lapse of years. We have now no favors to ask. We have come to do a work for posterity; not for ourselves.

In no single vote sir, that has been taken in this body, has there been the slightest approach to party lines, and I verily believe there will be none throughout our session. For myself, I here give a pledge to the Convention that I will know no man in this house as a mere party politician, and I hope sir we will not suffer our peace and harmony to be disturbed by reporters, who shall seek to throw the poisoned chalice into this Convention.

I ask no immediate action upon this subject, and hope nothing will occur in future to make it necessary for the Convention to take any measures in relation to the reporters admitted to seats within the bar.

Mr. Stites offered a resolution for the printing of 300 copies of the reports already printed, "Right of Suffrage," "Future Amendments to the Constitution" and the "Executive Department," for the use of the members of the Convention.

Mr. R. P. Thompson moved to insert 500. He thought that number would be necessary. He had been called upon himself, for several copies. Accepted by the mover.

Mr. Parker said the reports were published in the newspapers, and he thought that was the most effectual way of disseminating information as to their contents, and the reports will doubtless be altered and amended before they are adopted.

Mr. Ryerson moved to insert 120. He thought, if we intended them for the use of the public, the number of 500 would not be enough, *besides making unnecessary expense*, and for our own use, it is too many. 120 will be two for each member—and the information will be sufficiently scattered among the people by the newspapers.

Mr. Hornblower thought that number would be not large enough.

Mr. Browning concurred and moved to insert 300, which he thought would be few enough for our purposes.

Mr. Stokes said the differences of expense between 120 and 500 would be merely nominal, after the type is set up. He hoped the number would be 500.

The resolution was finally adopted ordering 300.

Mr. Ewing suggested that we should either take up one of the reports that has been presented for discussion, or adjourn in order that the Committees may have an opportunity to proceed with their business. The committee which he was upon, if they had the day granted to them, would probably be ready to report tomorrow. He, however, moved to proceed to the consideration of report No. 1, on the Right of Suffrage, &c.

Mr. Randolph suggested that the different reports should be referred to the Committee of the Whole, which committee can decide as to what report they will take up.

After considerable conversation between Messrs. Ewing, Child and Randolph, Mr. Clark suggested that it would be much better and would expedite business, to adjourn, so that the Committees might complete their work as speedily as possible, and present all their reports. It would be necessary as he believed, that the Convention should have all the reports, embracing the whole constitution before them, before they could intelligently consider and dispose of any one of them.

Mr. Clark moved to adjourn till tomorrow morning.

Mr. Ewing heartily approved of this course, if the Convention should be willing to take it.

The motion was agreed to, and the Convention adjourned.

Wednesday Morning, 22d May.

At ten o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Starr.

Mr. Ten Eyck, from the Committee on Bill of Rights, made the following report:

The committee appointed to inquire into the expediency of adopting a bill of rights and privileges, report the following:

I. All men are born equally free and independent, and have certain natural and unalienable rights, among which are those of enjoying life and liberty, acquiring, possessing, and protecting property, and of possessing and obtaining safety and happiness.

II. All political power is inherent in the people; government is

instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, and to abolish one form of government, and establish another, whenever the public good may require it.

III. No person shall ever, within this state, be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience, nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person within this state ever be obliged to pay tithes, taxes, or other rates, for the building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministers, contrary to what he believes to be right, or has deliberately and voluntarily engaged himself to perform.

IV. There shall be no establishment of any one religious sect, in this state, in preference to another; and no inhabitant of this state shall be denied the enjoyment of any civil right, merely on account of his religious principles.

V. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right: 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.

VI. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the papers and things to be seized.

VII. The right of trial by jury shall continue inviolate.

VIII. In all criminal prosecutions, the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and the assistance of counsel in his defence.

IX. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or militia, when in actual service in time of war or public danger.

X. No person shall be twice put in danger of punishment for the same offence: all persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident or presumption great.

XI. The privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

XII. The military shall be in strict subordination to the civil power.

XIII. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner prescribed by law.

XIV. Treason against the state shall consist, only, in levying war against it, or in adhering to its enemies, giving them aid and comfort: no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act or on confession in open court.

XV. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall be passed.

XVI. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

XVII. Private property shall be held inviolate, but subject to public use, provided a just compensation be made to the owner.

XVIII. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

JAMES PARKER,
JNO. C. TEN EYCK,
DAVID NAAR,
JOHN BELL,
JONATHAN PICKEL,
M. JAQUES,
JOSHUA SWAIN.

[No reason is given why Stokes' name is omitted.]

[G]Mr. Ten Eyck moved the report lie on the table, and 300 copies be printed. The motion was agreed to, after it was amended by increasing the number to 500.

Mr. Browning moved to refer the Reports [J]from the committees on "Bill of Rights," "Future Amendments to the Constitution," "Right of Suffrage" and "Executive Department" [G]to the Committee of the

Whole. Agreed to.

On motion of Mr. Ryerson the Convention resolved itself into a committee of the whole, on the Report on the Right of Suffrage.

The President called Mr. Wurts to the Chair.

Mr. Randolph suggested it would be better to take up the first Report on the mode of making future amendments; and made a motion to that effect; which was agreed to.

The report was read [see Index for text].

Mr. Jaques moved to amend so as to require the consent of only a majority of the legislature. The provision as it now stands, requiring a two thirds vote, was now a part of the constitution of New York; and the consequence was that it was almost impossible to get an amendment of the constitution submitted, and a proposition was now entertained to call a convention to alter this feature.

Mr. Child said if he felt sure that representation in the upper house would be based upon population, he should not feel anxious on this point, but if the upper house should be constituted as heretofore, this provision would enable the representatives of one fifth of the people to prevent any amendment.

Mr. Hornblower was desirous of obtaining the sense of the Convention as to the propriety of shortening the mode of making amendments. He had a motion to submit which might supersede the one now before the Convention, and that was to amend so that a majority of the two houses of any legislature might propose any amendment to the people, and if approved by a majority of the people, it should become a part of the constitution.

Mr. Ryerson should vote for the amendment because the provision to be stricken out would constitute a very prominent point of attack to the opponents of the new constitution. We should make it our object to frame such a constitution as will be adopted; but if we adopt the mode proposed in the report, it will be said that we have endeavored to deprive the people of the power to alter our work.

Mr. Randolph was in favor of the amendment. He was in favor of submitting the amendment to two successive legislatures. But he could not see the propriety of requiring in one case, a two thirds vote. Mr. R. went on to argue that all that was necessary was to prevent hasty amendments by the legislature, and to submit these questions to the people, for their deliberate approval or rejection.

Mr. Hornblower said if this amendment should prevail, he should not offer his.

Mr. Browning thought the fundamental law of the state ought not

to be altered for slight reasons, nor without the consent of a large majority. Besides we have against the amendment, the light of experience. Mr. B. cited the cases of the constitutions of the U. States, New York, Pennsylvania and Tennessee. The majority of the legislature might not be chosen with reference to the proposed alteration, but rather under the influence of some temporary political excitement.

Mr. Hornblower made some impressive remarks on the propriety of doing nothing that would operate against our own work.

If the people of New Jersey have submitted for sixty years to a colonial charter—which is no constitution at all—they may be safely trusted with the power to change their constitution whenever the majority of the people shall desire it. He argued that in the mode proposed by the amendment there was no danger of ill-considered action. He was willing to believe that no legislature would of their own mere motion, originate a project for a single amendment. The people—the press—must first speak. Years would probably elapse; and when the public voice became so strong that the legislature should propose such an amendment, they could not pass it. It must be discussed a whole year by the people. The next legislature would be elected with reference to this question; and then to require two-thirds of the legislature to vote for the amendment, before it could be submitted to the people, was in his opinion not republican.

But if this motion should not prevail, he feared it would defeat our work. He would not express his opinion—but his fears only, that this would be the result—especially when we remember the consideration referred to by the gentleman from Morris (Mr. Child.)

Mr. Dickerson's first impressions were in favor of the report, but on reflection he had changed his mind. We ought to adopt a practicable mode of making future amendments. A number of the states have adopted this plan, simply because it is a part of the constitution of the United States. But sir, no amendment to that constitution ever has been or ever will be made. Since the crisis in regard to the election of President and Vice President, which almost produced a revolution, this provision in the constitution of the United States has effectually prevented all amendment.

All that is necessary is to provide against hasty action, and it appeared to him, the plan proposed by the amendment would be sufficient. In Pennsylvania they require two-thirds of the members present. If we require a majority of the whole, it will be as effectual, and may be a more effectual safe-guard.

Mr. Ogden was opposed as well to hasty legislation as placing

barriers in the way of the amendment by the people, of their fundamental law. The mode proposed by the amendment, he argued, would interpose sufficient guards. To require more would look as if we thought our work so perfect that we were desirous to perpetuate it.

Mr. Child still considered the reason he offered for this amendment, a substantial one. In all states to which the gentleman from Camden had referred, representation in both houses is based on population. But as it is probable that the larger counties will concede this point to the smaller, in this Convention, he must lay the greater stress on this amendment. He would be in favor of it, even if the representation in the upper house should be based on population, because he thought it provided sufficient guards.

The motion to amend was agreed to.

Mr. Ryerson moved to amend by adding that each amendment submitted, should embrace but one subject. The legislature might submit a popular amendment, and connect it with an unpopular one; and both might be voted down in consequence.

Mr. R. S. Kennedy thought the object of the mover was already reached by the language of the report. If the legislature should disobey that, they might disobey the restrictions proposed by Mr. R.

Some discussion followed between Messrs. Ryerson, R. S. Kennedy, Parsons, Zabriskie, Hornblower, Allen, Dickerson, Clark, Naar, Child, Vroom, Halsted and R. P. Thompson, as to the language of the report and amendment.

Mr. Vroom proposed a modification of Mr. Ryerson's motion, which that gentleman accepted. The amendment was not agreed to.

Several amendments to the phraseology offered by Messrs. Hornblower and Ryerson were adopted.

An amendment offered by Mr. Wood requiring the amendments to be submitted to the people at an election to be held for *that purpose only*, was rejected.

Mr. Field moved to amend by requiring a vote of two thirds of each house of the legislature to propose amendments in the first instance. Mr. F. advocated this amendment, as a necessary guard against hasty alteration proposed every year by a bare majority of the legislature. Almost every member of every legislature fancies that in some respect the constitution may be improved. He deprecated this eternal agitation of questions of constitutional law. Mr. F. referred to the objection made by Mr. Dickerson, to the provision on this subject in the constitution of the United States. He (Mr. F.) regarded this provision as one of great value; and if instead of it, were substituted such a provision as is now proposed, amendments to the Federal Constitution would be agitated and submitted by almost every Congress. Mr. F. referred to what was said by Mr. Child and Mr. Hornblower, in respect to the manner in which the upper house would be constituted. He did not understand the force of their argument. The gentleman from Morris admitted that the two-thirds provision was *salutary*, but he feared an error would be made on the subject of the representation in the upper house, and therefore he would introduce another error into this report to balance the former error which he feared. Let us do right in this case, and meet the other when it arises. Sufficient to the day is the evil thereof.

On motion of Mr. Browning the committee rose and obtained leave to sit again; and the House adjourned [J] to this afternoon, at three o'clock.

[G] 3 o'clock—The Convention again in committee of the whole, resumed the consideration of Mr. Field's motion to amend the Report of the committee on Future Amendments, so as to require the consent of two thirds of both branches of the legislature, in originating amendments.

[A] Mr. Browning said he had been requested by several members to move that the further consideration of this report be postponed, for the present, and he therefore made the motion, and that we proceed to take up the report on the Right of Suffrage.

[A] Mr. Hornblower thought it would lead to confusion. We had an interesting debate this morning upon one subject and the arguments are now fresh in our minds. He thought it much better to proceed with the same subject.

Mr. Ryerson thought we ought to settle this subject, as to future amendments, before we proceed to consider any other part of the Constitution.

Motion not agreed to.

[G] Mr. Hornblower (Mr. Browning having yielded his right to the floor) opposed Mr. Field's motion in an argument of considerable length. [A] Mr. Hornblower was sorry to differ with his highly esteemed friend from Mercer. He said the amendment prevented any further amendments of the Constitution, without the previous concurrence of two-thirds of both branches of the Legislature. He thought upon this subject, we were getting behind the age. I am not a radical nor a pop-

ularity hunting man. We are free men and have not to ask, as the Barons did, the consent of King John, to any amendments we wish to be made. We are here to make a Constitution which shall be always under our own control.

Much has been said about the Constitution of the U. S. He thought there was no parallel between that and the Constitution of New Jersey. Each of the States is sovereign, and might or might not assent to the Constitution and come into the confederacy. But our counties have not that privilege. Our State is but one territory, one people, one municipality. We are in fact only making a municipal law to govern the State. There is therefore no similarity between the Constitution of the Federal Union, of an Empire, and that of a sovereign State. He thought the requirement of the consent of two-thirds to amendments of the Constitution of the U.S., was a wise one, but that no such rule was necessary in a State. He thought we might trust ourselves and the people, and that the fears that had been expressed were imaginary.

But it has been said that it will keep up continual excitement and agitation. He did not fear it. It would only spread intelligence among the people and make them wiser and better—but shut the door against them, and tell them that they cannot make amendments without the consent of two-thirds, and he feared the scenes of Rhode Island [the Dorr Rebellion] would be enacted over again; and he wanted to prevent the possibility of such an occurrence.

But whence these fears? Do they arise from the past history or occurrences of our own State? Do the acts of past Legislatures warrant the fear that the acts of a majority will create excitement or confusion? He thought not. He had always thought and heard from his earliest childhood, that the present constitution was only a temporary expedient—adopted to last only as long as the thunders that sounded around them, and to terminate with the war of independence, and if that war was successful, that another constitution would immediately be made—one fit to govern free men. And yet sir, since that time we have lived peaceably and quietly and as yet without change. We have had no riots or lynch law. Efforts have been made and urged with deep anxiety for a change of the Constitution but this excitement has never broken the peace or disturbed the tranquility of the people. It has promoted their intelligence and morality. It is now more than forty years ago, that one of the most eminent lawyers in this State, at a labor of months and years, wrote a book (Eumenes) in favor of a new Constitution, which does honor to his name as he sleeps beneath the sod.

[Eumenes: Pseudonym of William Griffith. His pamphlet, a collection of 53 articles from the *New Jersey State Gazette* issued in 1799, was written to show that the 1776 State Constitution was defective and should be revised. He called for a constitutional convention, but the proposal was voted down in a popular election called by the legislature. The Dictionary of American Biography has a bibliography.] Many years ago too, a paper was established at Princeton for the very purpose—and though from that time to this while the subject has been continually agitated, a single majority of the Legislature, as the late one did, had the power to take the preliminary steps for a revision of the Constitution yet it was never done! More than twenty years ago, too, I occupied the very seat I now do, in a convention selected by the people, to take steps for a revision of the Constitution. [In 1827 delegates from nine counties met at Trenton and drew up a memorial asking for a constitutional convention. The petition was buried in committee.] Where, then is the danger? For 40 or 50 years this excitement and feeling has continued, and yet without harm or injury—I believe many are better and wiser for it, and I attribute not a little of what I know of government, to the interest I took in the subject when a young man. My worthy friend has said "My word for it, if you give a majority of the Legislature the power to propose amendments, you will have continual projects of amendment and change." Imitating his manner, I will say *My word for it*, if you require two-thirds, to propose them, you will not only *veto* any amendments hereafter, but you *veto* the Constitution itself! You plant a dagger at the heart of your own offspring!

These fears are imaginable, Sir. No men in the Legislatures hereafter, will risk their reputations by proposing amendments for their own wishes or purposes. No amendments will be proposed until they have undergone—and undergone—and undergone, discussions after discussions in the primary assemblies of the people: and then they are only to be proposed to the people for their ratification—but if you say that two-thirds of the Legislature shall be required to propose these amendments, you may as well say that your Constitution shall be like the law of the Medes and Persians!

He said one great object we should have in view should be, to make, not what we may deem the most perfect Constitution, but the best Constitution, which the people will adopt—and one containing such provisions that proper amendments may hereafter be made.

He would merely remark further that if you are to require two-thirds in either Legislature he should prefer that it should be the last

—pray let the people hear and consider the amendments, at least.

[G]Mr. H. further said that it was an objection to the motion, that, if adopted, it would secure the county representation in Council if that should be retained in the new constitution; but that if only a majority vote should be required, an amendment might be adopted in five or ten years, substituting for the county representation in Council, a representation on the republican basis of population. If we yield this point now we yield it forever.

[A]Mr. Stokes said that his opinions were not changed. [G]Mr. Stokes advocated the motion on the ground that Constitutions were designed to protect the rights of minorities and that therefore a mere majority ought not to have the power to unsettle them at any time; that if we were to depend on mere majorities there would be no reason in establishing a constitution but that every thing might be left to ordinary legislation; that the constitution now protects certain rights against the legislature, but if amendments are to be made by majorities, those rights will be completely at their mercy; that there is a similarity between this case and that of the Federal constitution, for the rights of small counties are to be protected, for instance against excessive taxation and that this consideration becomes of great importance because a wish is already avowed to take away the representation of the small counties in Council; and finally that "everlasting agitation" ought to be guarded against. [A]The rights of the minority are now guarded, and so they should remain.

Mr. Browning said, it seemed to be conceded when a Constitution has been once agreed upon and ratified, more than ordinary restraints and guards should be thrown around it; and the question now is, whether we shall guard it by two-thirds, or by a bare majority of the Legislature of this State. He had listened with delight to the arguments of the learned gentleman from Essex, but he was not yet convinced. He regretted with the gentleman from Warren, that any other than the mere question of amendment had been drawn into discussion. If it is intended by giving a bare majority the right to propose amendments, to affect hereafter the representation of the upper House, the people ought to know it, and the matter ought to be understood here.

[G]Mr. Browning also advocated the motion as a protection of the small counties against the avowed wish to deprive them of their representation in Council; an amendment to that effect might be carried at some future time of excitement; the majority ought not always to govern; they might be collected in large cities and might seek to advance some interest peculiar to themselves at the sacrifice of the agricultural

or other interests; that agitation was more easily got up and therefore more to be guarded against in a small state, than in the whole union, and therefore our state constitution should be at least as well guarded as that of the U.S.; that almost all the other states, Maine, Massachusetts, Connecticut, New York, Delaware, Maryland, Virginia, North Carolina, (and he thought) South Carolina, and perhaps others, had adopted the two-thirds principle; that the past history of the state afforded no assurance that we should be free hereafter from undue agitation as regards our fundamental law, because it has been difficult heretofore to make amendments, but henceforth an easy mode would be laid down.

[A]He had no doubt that it would be in vain that you adopt a Constitution here, if by refusing this amendment, you aim at a change of the old plan of the Council representation, for the people will not ratify it.

He could not concur either in the argument drawn from our past history against the fear of frequent changes and excitement. He thought the reason why changes had not been made was, that it was necessary to *call a Convention* to perfect these changes; but now we are adopting a plan by which these amendments may be made without calling a Convention at all, and he greatly feared, unless you adopt the two-thirds principle, that amendments, when they can so easily be got before the people, will be continually, and without sufficient consideration, proposed and submitted to them.

[G]Mr. Naar regretted that extraneous considerations had been introduced. The question was simply whether the people should have the right of amending the Constitution or not. He wished the rights of the minority guarded, and he went into a practical illustration of the operation of the "majority principle," to show that it would be safe, cautious and conservative of the rights of the minority. The majority would not crush a minority. And shall they be limited by the will of the minority? Is it republican, that a minority should rule? He thought it was radical enough that a majority should rule. Mr. N. would take the present Constitution with this means of future amendment, rather than the best devised system of checks and balances tied up against future reform.

Mr. Child said the smaller counties would constitute a majority of the Council, and therefore they would hold the control of future amendments, even under the "majority principle." With the two-thirds principle, a very small minority might prevent amendments desired by the majority year after year.

Mr. Hornblower made some remarks imperfectly heard by the reporter, strengthening his former positions, and saying in reply to Mr. Browning that he could conceive of no possible case in which the people of the cities could by any amendment of the Constitution, or any state legislation, depress agriculture or elevate manufactures. Moreover, if majorities are not to be trusted, put the restriction on the people, and require a vote of three fifths for the adoption of any amendment.

Mr. Child thought that gentlemen, instead of making the Constitution more permanent, would make it more liable to change; for if a small minority should defeat, year after year, the efforts of a large majority to obtain certain amendments, the people would call on the legislature to order a convention, (as they would have a right to do,) and make another constitution, not containing this obnoxious principle.

[A]Mr. Field said he understood the Chief Justice to say that he was desirous to keep up with the spirit of the age—thereby intimating that we were behind it. Do I understand him to say that the spirit of the age requires that we should view our constitution now less solemnly than we were wont? That we should throw less guards around them than before? Is that the spirit of this age or of the past? I have referred to the Constitutions of many other States, now hoary with age—whose foundations were laid in revolutionary times, and I find that they all say, when you have made a constitution, Guard it! [He] [G]referred to the Constitution of the United States, [A]which has this two-thirds principle, [G]and all of the states of the Union, which, with one or two exceptions, contained provisions as restrictive, or even more restrictive than this. [A]That of New York has it—so that of Massachusetts. [G]He referred particularly to Michigan, Missouri, and Rhode Island, whose constitutions were recently made. [A]Rhode Island's [1842] requires that amendments should be ratified by three-fifths of the people. [G]In the New York Convention, the committee reported a plan requiring a two thirds vote of both legislatures. General Root alone opposed it, and he was put down by a vote of 111 to 14. Ultimately, the Convention adopted the plan of requiring a majority vote only from the [first] legislature, but they retained the two thirds vote as to the second. The chief object of a constitution was permanency, and freedom from alterations by mere majorities.

[A]Mr. F. said he might have incorrect ideas about constitutions but he thought they should be in a degree, out of the power of majorities. I regard constitutions as one of the noblest inventions of modern times. The ancient republics were without them—and the consequence is, that

the plains of Marathon are now trodden by the slave, and the once proud mistress of the world is now only celebrated for the ruins which shadow forth her ancient glory—and it has been reserved for us in modern time to invent constitutions, by which the people may be protected against themselves. [G]He approved highly of the noble sentiment of his friend from Burlington, (Mr. Stokes) that the constitutions were made to protect the rights of minorities. In every legislative body rules are adopted for this very purpose. The last thing the people ask for is a constitution subject to frequent changes. It was not, however, the majority of the people, but of the legislature that he was afraid of. [A]I should be willing to trust the sober second thoughts of the people upon this matter, but in exciting times the most flagrant and burning wrongs have been committed by majorities.—But here you do not propose to submit these amendments to a majority of the people—but only to a majority of the Legislature. [G]Agitation—restless, unnecessary agitation was to be deprecated; and if we have not had much of it, it was [not] because there had been no disposition to change the constitution, but because the legislature had changed it at pleasure.

[A]He alluded to the objection that the history of the past is a strong argument against any danger from trusting amendments to the majority. The Legislature itself amended the Constitution continually without submitting the amendments to the people at all—and he said if the qualifications of £50 for a voter and £1000 for a member of Council had not been changed by the Legislature the people long since would have amended the constitution!

[G]On motion of Mr. Green the committee rose and obtained leave to sit again and the convention adjourned [J]till to-morrow morning, at ten o'clock.

[J]Thursday morning, 23d May.

At ten o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Beck.

[G]On motion of Mr. Ewing the convention resolved itself again into a committee of the whole, and took up the unfinished business of yes-

terday, Mr. Wurts in the chair, [A]on the report for future Amendments to the Constitution.

Mr. Ewing said he had not intended to participate in a debate. He fully concurred in the amendment offered by the gentleman from Mercer [Field, requiring two-thirds of each house to originate amendments]. In the debate yesterday, he had heard doctrines and principles avowed which he could not but consider as most objectionable. He saw upon the sands of New Jersey the impress of the Lion's Paw—and the innovation now proposed he looked upon as a most dangerous one. He said that when our present Constitution was framed there were thirteen counties—and although that Constitution has been called an imperfect one he thought it had been productive of the greatest blessings. He traced out the principle of equality of representation in the Upper House which it contains, as existing in the different counties so as to prevent the oppression of the smaller townships by the larger ones. [G]This equal representation was a fundamental principle in our present constitution, on which he passed a glowing eulogy. This principle had prevented much unwise legislation, and saved the state from debts too great to bear. [A]He alluded to the effort once made by the Morris Canal Company to obtain a large loan upon the credit of the State, and said [G]after the bills had passed the Assembly [A]it was only prevented by a single vote [G]or two [A]in Council. So it was in the case of the application of the Delaware and Raritan Canal Co. [G]The principle was adopted in the Constitution of the United States. It exists in all our counties, in the equal representation of all townships in the Board of Freeholders. [A]He thought this principle was our only surety against oppressions from abroad and internal commotions among ourselves. If this principle had been adopted, the ancient republics of Greece and Rome would have still remained. Heavier bodies do not more certainly descend or lighter ones arise, than does the mind of man grasp after power when the opportunity occurs. If this principle did not exist in the United States or in this State, what is there to prevent the evils of consolidation? He was sure the delegates from the larger and more powerful counties had too much magnanimity to take this advantage of the smaller ones. He venerated the old Constitution and he hoped the principle which it contained and upon which we are now debating, would be maintained and preserved. He thought it of vital importance to the interests of his constituents and the people of the State at large: and he thought there could be no member who did not feel the greatest interest and responsibility in the decision of the question now before us. Mr. E. spoke with much zeal and energy.

[A]Mr. Ogden thought the debate had taken a much wider range than it ought, [G]that all discussion as to the representation of the counties in Council was irrelevant. [A]The question simply is whether we shall trust the people of New Jersey with the custody of their fundamental law, and that question should be allowed to stand upon its own merits. If we expected that perfection would be the result of our labors here, it would be in vain to provide for any future changes—but if we think that the Constitution shall require amendments after we shall have left it, it is our duty to prescribe a fair and just way in which these amendments may be made. The report provides that a majority of the Legislature may originate amendments, but the amendment proposes to require two-thirds. The arguments in its favor, resolve themselves into two—first that it will better preserve and secure the rights of the smaller counties, and secondly that it will prevent rash and hasty amendments. As a delegate from one of the smaller counties, in which, he said was contained all his property and where he expected to end his days, he would say that he did not fear any of the dangers alluded to, as likely to result to the smaller counties. Each county now has a member of the Upper House and he could not anticipate a different result from the action of this Convention, and if any gentleman will take the pains to inquire into it, he will find that the smaller counties always have had and will have, the power there to protect themselves against the encroachments of the larger ones. He therefore did not fear the dangers. Neither did he fear that rash and hasty amendments would be made by the majority. [G]To require the approval of two legislatures and of the people, was a sufficient guard against hasty action. Our work may be imperfect. Amendments may be necessary; but this two-thirds principle will prevent all possibility of amendment. Look at New York where the people are groaning under evils, but can't get rid of them because two thirds of the legislature will never agree to any amendment.

Mr. Green would correct the gentleman. In New York, two-thirds of the legislature are not required; a majority may submit an amendment to the people. [Green was mistaken. The procedure in New York was explained by Field the previous afternoon.]

Mr. Ogden. Well! That only strengthens my argument. If with a majority only, an amendment generally asked for, can not be submitted to the people, much less could it be, if a two thirds vote were required. But the apprehensions of frequent alterations were ill founded. No member of the legislature would dare to advocate amendments which had not been called for; nor would the people sanction

them, but would stamp their authors with the broad seal of public reprobation. [A]He further proceeded to oppose the amendment at length.

Mr. R. P. Thompson should have been satisfied to have given a silent vote in favor of the amendment, if certain gentlemen had not alluded yesterday to the arrangement of the Senatorial districts. He was a delegate from West Jersey and from a small county, and it was his duty as it was his pride to endeavor to protect the interest of his constituents. [G]When such results as the abridgment of the representation of the small counties, are looked to, he should be unfit for his trust, did he not endeavor to guard against these results. [A]He was sorry, as the gentleman from Essex said yesterday, that extraneous matter had been introduced in this debate—but his regrets came too late; these matters have been introduced and it is proper to meet them fairly and openly—and without intending any thing like a threat, he would say that if this principle of Senatorial districts is endeavored to be engrafted in our Constitution, he would not answer for its reception in West Jersey. [G]Again as to the question immediately before them, he was struck with the remark of the gentleman from Mercer, that constitutions should be made to endure a long time and not to be ephemeral like legislative acts. Therefore they ought not to be changed by a mere majority—by the same vote as was necessary to change a legislative enactment. [A]He said out of 20 States, whose provisions he had cursorily examined, eleven of them had adopted the two-thirds principle, and the most of the others contained some similar guards.

[G]He did not draw the same inference, as the gentleman from Passaic, from the fact that the amendments urged upon the legislature of New York had not been approved by even a majority. The inference he (Mr. T.) drew was that the amendments were not such as should be approved of. Mr. T. contended that the people did not want an easy mode of amendment, and he was unwilling to trust the legislature with this power which might be used for party purposes. [A]If the larger counties should say to him, come let us *figure* together, and see how the population stands, he would answer, come let us *reason* together and see how we can adopt a principle of representation, like that which induced little Delaware to come into the confederacy side by side with colossal New York.—He likewise proceeded at considerable length.

[G]Mr. P. B. Kennedy opposed the amendment. The report guarded sufficiently against hasty action. It gave time for the people to reflect. A majority might do wrong, but minorities were as likely to do wrong; nor did it seem to be common sense that they knew more and could better determine the welfare of the people than majorities. Mr. K.

went over, ably, the grounds touched by previous speakers. [A]He knew that majorities sometimes acted hastily and wrong—but he did not know that they were more in the habit of doing so than minorities were. What is the converse of the proposition? Is it not that instead of trusting the majority you give the power to a minority? He feared that if the amendment was adopted, the Constitution itself would not be ratified. He thought the people would not be satisfied with it: and that there was no danger of too much excitement or too frequent changes. The people should have the control of their Constitution; and the majority of the Legislature should be enabled not to *make* an amendment, but to propose one. He thought we had nothing to do with the other question which has been introduced into this debate. Sufficient unto the day is the evil thereof. He should vote for the report of the Committee because he thought there was no danger in trusting the majority and because he thought that the people were capable and desirous, after 2 or 3 years reflection, of having the power to make such amendments as were thought necessary.

[G]Mr. Child feared we should endanger the adoption of the Constitution if we render it very difficult to amend it. There are many persons in the State, who are very desirous to have certain principles engrafted in the Constitution, but who will vote for it without them, if there is a fair and easy method of procuring amendments hereafter—but who will be constrained to vote against it unless these principles are in it, if there are strong guards and checks against future amendments. He thought this idea was entitled to consideration—and that we should adopt such a Constitution as the people will ratify.

[G]Mr. Allen advocated the amendment as preventing a party majority from proposing amendments for party ends. And as a party generally retains power several years, the same party which originated might approve the proposed amendment, and sanction it at the polls. But a party rarely has two thirds of the legislature. Besides, the history of our legislation will show that those measures which are not of a political character, and which are just and right, generally pass by a two thirds, or almost an unanimous vote. Any amendments, therefore, really meritorious, and not of a party character, might easily obtain the sanction of two thirds of both houses; and with such a sanction they would commend themselves to the people. The religious rights of the minority are of great importance, but if the same exciting causes should operate here as have lately in Philadelphia [anti-Irish riots], the majority might be led, in their excitement, into bigotry and intolerance, and violate the rights of the minority.

[A]Mr. A. further advocated the amendment at considerable length.

Mr. Parsons, had come to the conclusion that the two-thirds principle should be somewhere—particularly when he found looking over the Constitutions of twenty-five states (excluding New Jersey,) this principle or something stronger is adopted in every one except Pennsylvania; and he thought we ought to pause before we adopt a principle at variance with all the other states. (Mr. P. went through the states and explained the manner in which amendments may be made to the Constitutions of each).

He should prefer that the two-thirds vote should be required from the second Legislature as reported by the committee, but as that was disagreed to, he should vote for the amendment.

Mr. Zabriskie thought that if we adopted the amendment we should invade a fundamental maxim.—The fundamental tenet of all our institutions is, that of the majority—and when that principle is changed, there ought to be the best reasons for it. [C]The experience of this state had shown that the majority would not use their power to make hasty amendments. [A]He said that we were to make a constitution for the people of New Jersey and not for Michigan or Arkansas, and he held that there was a great and essential difference between the people of those states and ours. He said that all the gentlemen who had spoken placed the security of our rights and interests upon the wrong basis. —They do not rest upon written constitutions, but upon the virtue and intelligence of the people. Of what avail to the people of South America were their written constitutions? Did they enjoy the rights which were written on their parchments?

Mr. Field. Will the gentleman permit me to answer his question? I answer that their rights were not secured because they were continually changing their constitutions.

Mr. Zabriskie. Why, Sir? Because the people were not capable of appreciating or enjoying liberty—and were therefore continually making these changes. He further argued that the "plains of Marathon were not trodden by the feet of slaves," for the want of written constitutions, and that the ancient republics were destroyed because the people were corrupt—and became, first, the slaves of vice, and then of despots.

Mr. Z. contended for the majority principle with great earnestness, and said that although if he resided in Michigan or Arkansas, he might or might not be willing to trust the majority, yet that in New Jersey, he was willing to trust it. The people of New Jersey are peaceable and orderly, and no danger can result from giving the majority the power

to amend the Constitution at their will!

[C]The vote was then taken on Mr. Field's amendment, and it was lost 25 to 28.

Mr. Green then moved to amend by adding, at the end of the report, a provision that [A]no convention to alter or amend the constitution shall be called but by authority of the people. An unexceptionable mode of making their sense known, will be for them, at their annual town meetings, in every fifth year from and after the adoption of this constitution, to vote by ballot for or against a convention, as they shall severally choose to do:—and it shall be the duty of the officers of such town meeting to receive the vote so given; which election shall be conducted, and the result ascertained, in like manner, as far as practicable as the election for governor is conducted, and the result thereof ascertained: and if thereupon it shall appear that a majority of all the citizens of the state, duly qualified to vote for officers elective by the people, have voted for a convention, the legislature shall, at their next session thereafter, provide for the meeting of a convention, to consist of as many members from the several counties as there shall then be in the House of Assembly, to be chosen in the same manner as the members of the House of Assembly are chosen.

The majority of all the citizens in the state having a right to vote for or against a convention, shall be ascertained by reference to the highest number of votes cast in the state at any one of the three elections for governor next preceding the day of voting for a convention, except when they shall be less than the whole number of votes given for or against a convention; in which case the said majority shall be ascertained by reference to the number of votes given on the day of voting for or against a convention.

He said that it had been earnestly contended that the majority should rule—and he did not know that it was denied by any body. He proceeded to show that by the principle which you had now adopted less than one-sixth of the people can prevent any amendments which may be desired.

Mr. Hornblower asked whether the gentleman had been explaining his amendment or talking upon the subject which has already been decided; and how he could make out that one-sixth could control the majority.

[C]Mr. G. said his object was to put it in the power of the majority of the people to call a convention, if they should choose. [A]He said there are in the State eighteen counties [before Camden was created]. [C]By the plan of the report, nine small counties could prevent any amend-

ments. These nine small counties contain 121,000 inhabitants; the other nine, 251,000. [A]A little over 60,000 may be opposed to the amendments in these nine small counties and thus defeat the will of all the inhabitants of the large counties, and of almost half in the small ones: so that 60,000 people can prevent the amendments which may be deemed necessary by the other 320,000. [G]The nine smaller counties have only 10,000 voters, [A]so that upon the principal of a representative in Council from each county, [G]a majority of these, or only 5,100 could control these counties, and prevent amendments desired by all the rest of the state. His object was to prevent this, and enable the majority of the people to have a convention when they wished it.

But he was also anxious, while he extended the powers of the people, to restrain the opportunities of young or ambitous political schemers to get up agitation on this subject, through the legislature, without the consent of the people.—He wished to restrain the legislature, and if his first amendment should be adopted, he should follow it up with one, to amend the report so as to require a vote of two thirds of the Assembly to originate an amendment. [A]Mr. G. proceeded with great eloquence and ability.

After some conversation between Messrs. Green, Hornblower, and Naar, as to the amendment, [A]Mr. Ryerson moved the Committee rise. Agreed to, and amendment ordered to be printed.

[J]The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

The president presented a communication from the secretary of state, transmitting copies of the census of the state, for the years 1830 and 1840, in accordance with a resolution heretofore passed for that purpose;

Which was read, laid on the table, and one hundred and twenty copies of the census ordered to be printed.

[G]The convention again, on Mr. Ryerson's motion, went into committee of the whole, Mr. Wurts in the chair, and took up the business of the morning.

Mr. Wills objected to Mr. Green's amendment. [A]He said it would cause agitation every five years, which the committee wished to avoid. He considered the amendment as objectionable in every point of view in which he could consider it.

Mr. Field said, that this morning the gentleman who offered this

amendment, stated that if this was adopted, he intended to follow it up by another to provide for a two-third vote in the House and a majority in Council. He was inclined to think that this would meet with favor here, and he should be glad to have the present amendment withdrawn for the present, & the other presented.

[G]Mr. Allen concurred heartily in some of the principles of the amendment; especially in that which required a vote of a majority of all the voters of the state, to call a convention to revise the constitution. If not adopted now, he should move hereafter to incorporate this principle in the plan adopted this morning for future amendments. It was highly necessary for the protection of large, agricultural counties, thinly settled, and slowly moved, against smaller, compact, and populous counties, easily excited and brought out on special occasions.

Mr. Green, at Mr. Field's suggestion, withdrew his amendment in order first to propose his other amendments. He moved to amend so as to require a vote of a majority of Council, and of two thirds of the Assembly, to originate amendments.

Mr. Hornblower opposed the amendment for the reason furnished him this morning by its mover, that by the report a very small minority might defeat an amendment desired by a large majority of the people. Yet, sir, he proposes now to aggravate the difficulty by adding to it the necessity of obtaining a two-thirds vote in the other house.

[A]Mr. Randolph was likewise opposed to the amendment. But he did not consider it as to large counties or small counties, but upon the broad principle that a majority shall govern—and he took the Legislature as representing that majority. He said that by the law under which we are convened, the result of our labors is to be ratified by a majority of the people, and he insisted that it would not be right to say to posterity "We have adopted this constitution by a majority, but you cannot change it without two-thirds." He was willing to admit that one object of constitutions is to protect the rights of a minority—but it is not to give the minority the power to govern the majority. If three-fifths of the people were in favor of certain amendments, by your amendments you give two-fifths the power to govern the majority—and how long would the people allow such a state of things to continue? I apprehend the time would be short. My friend from Mercer has talked about agitation—and agitation. I ask when would this agitation cease, if three-fifths of the people were governed by two-fifths? Why sir, not until we had gone a step beyond agitation. Look at the recent occurrences in Maryland and Rhode Island. [In Maryland an unauthorized convention met in 1837 and drew up a constitution.

The legislature made some reforms and the agitation subsided.] I know not what the facts were as to members, but I know that the *pretext* was that the majority were controlled by the minority.

Mr. R. then proceeded to show that there are safeguards and checks enough to prevent any rash or hasty amendments, in as much as these amendments have to be originated by one legislature, then published to the people, then agreed to, in exactly *the same form* by the next Legislature (and one would think that is some check) and then must be ratified by a majority of the people.

He agreed with both his friends from Mercer in their objections to this continual agitation. [G]None of the amendments proposed (except that of Mr. Wood) would prevent the agitation of amendments for party purposes. [A]But will you prevent this agitation by requiring two-thirds? He thought you would only increase it. If those persons who are in favor of certain amendments, find that they have not a majority they will quietly yield—but if they have more than a majority they will continue to agitate—and agitate until they get two-thirds. The very way to produce agitation is to bear down upon a majority.—Let a minority press like an incubus upon a majority, and agitation is inevitable.

He said that the argument in favor of the two-thirds principle, drawn from the Constitutions of other States, is a fair one, and merits a fair answer. He argued that they were made at a time when it was deemed necessary to protect the ruled as well as the rulers, and also to say that the constitution itself shall not be changed except by a two-thirds vote. [G]That this principle was first introduced into our constitutions soon after the Revolution, when European statesmen were predicting our ruin by the popular influence; and that it has since been copied by newer states without consideration. [A]The constitution of N. York, which was one of the last framed, adopted the principle, without debate, because it had been in the old one. In Pennsylvania the majority only is required—and if gentlemen desire it, I have no objection to the clause contained in that, that "no amendment shall be proposed oftener than once in five years."

Mr. R. proceeded to argue that the only way we can meet objections which may be made to our constitution, will be to say "We have made a constitution by compromise and concession, and we have left you an easy and fair way of amending it." It is said of an ancient lawgiver that in order to perpetuate the constitution which he had framed he told those to whom he entrusted it, that he was going into another country and swore them to preserve it unchanged till his return. Having done so, *he went abroad and committed suicide*. I do not say we shall be committing suicide by adopting this amendment, but I fear we should be at least endangering the work of our hands.

The amendment was lost—27-27.

Mr. Green then renewed his amendment offered this morning. He said he wished that the amendment should be distinctly understood. He repeated that a minority of the people, by the report of the committee will have the power to prevent amendments forever. He could not agree with the gentleman from Middlesex, who could not look behind the representation in the Legislature. He said the Legislature were not selected for the purpose of making constitutions. If that were their duty, he would admit the principle.

He said it would be perceived that the amendment only provides that the *people* may vote every five years. It does not compel them to vote. You provide by the report for such specific amendments as the Legislature may propose, but suppose the people rise up and say we wish the whole constitution revised: what provision have you made for that?

Mr. Condit. May I ask the gentleman, if the Legislature will not retain the power to call a convention as has been done in this instance?

Mr. Green. That is a question which may lead to a great difference of opinion. I—

Mr. Hornblower. If the gentleman will allow me, I will say that I have been thinking of that subject and am of opinion that this report only provides a mode in which specific amendments may be made, but the Legislature will still retain the power to call a convention to revise the constitution.

Mr. Green. I have proceeded in my whole argument upon the ground that if the constitution, provides the method of making amendments, the power of the Legislature is restricted by that constitution. I am not disposed however to argue that question with the Chief Justice. But if that power still will remain in the Legislature, I should prefer that it should be specifically restricted.

Mr. Hornblower objected to the amendment proposed (by Mr. Green this morning). He thought there was too much machinery about it, and that the constitution election should not be held at town meetings where every other kind of business is done.

The amendment (Mr. Green's) was NOT AGREED TO. Mr. Hornblower offered an amendment that by a vote of a majority of both houses, the Legislature may submit the question to the people (not oftener than once in ten years) whether there shall be a convention to

revise the constitution.

He was not tenacious as to this amendment, but would give his reasons for offering it. He was willing to let the report stand as it was before the House, as the only provision in the constitution on this point. In the first place, he was unwilling to have it a debatable matter whether the Legislature will have a right to provide for any other mode of amendment than that proposed in the report. Another reason was, he thought it was possible the time might come when the people would desire a revision of the Constitution as to the basis of representation. The change in the population, and other circumstances, would happen once in 10 or 15 years, which would render it proper that the people should have the power of revising the laws. He thought there should be a provision to this effect, and if in the course of time the people began to think they might like to have a revision of their constitution, they would pour their petitions in to that effect, and might induce the Legislature by a majority vote, to grant them a convention.

Mr. Browning thought that the question of convention or no convention should only be submitted at a special election.

Mr. Thompson wished to have the amendment lie on the table to be printed, as it was too important a matter to vote upon without further reflection and consideration, but this was declared out of order in committee.

Mr. Parsons, for the purpose of preventing the constant agitation which appeared to be so much dreaded, offered an amendment, that no amendment to the Constitution should be proposed oftener than once in five years, which was accepted by Chief Justice Hornblower.

Mr. Browning then offered an additional amendment, that the question of convention or no convention should only be submitted to the people at a special election: adopted.

Mr. Hornblower's amendment was agreed to.

[G]Mr. Wood, by unanimous consent, moved again his amendment, that future amendments should be submitted to the people at a special election held for that purpose only.

[A]Mr. Child said he had voted for it yesterday, but he had since seen cause to change his mind, and his reasons were that sufficient time would not be allowed the people to deliberate on so important a subject. No doubt it would tend to keep a party spirit from the election; but he did not think time enough would be allowed if this amendment prevailed.

Mr. Ogden desired to offer an amendment, which he thought would obviate the objection of Mr. Child's, and for his part he should not

allow the idea of the expense of a special election to deter him from pursuing such a course as would give the people full opportunity of considering the subject. His amendment was, that the question should not be submitted to the people until 4 months after the adjournment of the Legislature, as this would throw it out of the fall election. This was adopted; as was also the question which was reconsidered.

Mr. Allen thought that when this constitution was submitted to the people it would call forth a very large vote, and as the provision now stood, 5000 votes might change the whole, and he moved an amendment that a majority to decide upon amendments to the constitution, should be equivalent to the majority of the votes cast in the state at any one of the three elections held for Governor, &c.

Chief Justice Hornblower thought this was neither more nor less than putting another veto on any amendment to the constitution. It was not likely that so large a vote would be cast on a special election upon some small amendment which all were agreed upon, as at an election for Governor, and thus something absolutely necessary—a provision for some *casus omissus*, would never be adopted unless a majority of all the votes in New Jersey would turn out and vote for it.

Mr. Kennedy thought the amendment a very proper one; but it was lost.

[J]The committee rose, reported the same to the convention, with sundry amendments, and were discharged from the further consideration of the same. [A]It was ordered printed as amended.

[J]The convention adjourned till to-morrow morning, at ten o'clock.

[J]Friday morning, 24th May.

At ten o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Hall.

Mr. Parsons called up the resolution, offered some days since, relative to the appointment of a vice president. [A]Mr. Hornblower hoped it would be agreed to without hesitation. Agreed to *nem con.*

Mr. Hornblower moved we proceed to the election—and begged leave to nominate Alex. Wurts, Esq., who was thereupon unanimously elected Vice President.

Mr. Ryerson desired to submit a resolution, which had been suggested by several members. We have now gone through with one of the reports in Committee of the Whole, and it has been thought that it would be better to go through with all the reports in Committee, before we take up any of them in the house: In order that we may have a general outline of the different parts of the Constitution, before we finally decide upon any of them. He therefore offered a resolution to that effect.

Mr. Hornblower coincided in this view, as it might in the progress of the Convention be found necessary to refer the whole of the reports to a Committee to revise and prepare them and report them as a whole, to be discussed and finally acted on by the title.

Mr. Randolph thought the best way would be to let the reports lie on the table as they were reported by the Committee from day to day as it might be found necessary to agree definitely upon some matter essential to other parts of the Constitution. After some further remarks the proposition of Mr. Ryerson was adopted.

[G]On motion of Mr. Wood the convention went into committee; Mr. Stites in the chair. The committee took up the report on the Right of Suffrage.

Mr. J. R. Thomson for the committee which made the report, asked leave to correct the report so as to substitute the second for the first Tuesday of January, for the meeting of the legislature. Leave granted.

[A]The first article of the Report was taken up and read [see Index for text].

Mr. R. S. Kennedy moved to insert before "an inhabitant," in the first clause, the words *"a citizen and"*;

Mr. Wurts did not see any necessity for the amendment. If a person was a citizen of the U S he was a citizen of this State, if he resided within it. He considered it merely surplusage and entirely unnecessary.

Mr. Child thought the amendment might have an important bearing. If we adopt it, a person who has been naturalized only one week before the election, is entitled to vote, because he is a white male citizen of the U.S., and has resided here—and he cannot be a citizen unless he is naturalized. The Convention can see the effect of this, as it would prevent a person from voting, who had not been a citizen of the U.S. one year, and not one of the naturalized citizens of the State would vote for the Constitution if this was adopted. [G]He was opposed to the amendment.

[A]Mr. Kennedy—That is the object of the amendment. It [the article] might be so construed that a foreigner might on one day become a citizen, and vote on the next. If this provision is necessary in the next section, it is equally necessary here. The intention is that a foreigner should not be entitled to vote until he becomes a citizen and has resided in the State one year. If we grant him more than this, we grant him more than our own citizens possess. If we adopt the section as it is, a foreigner may only be naturalized one day, and then entitled to vote. If a native born citizen is required to reside in the State one year, why should not a foreigner be required to reside the same length of time after he has become a citizen? I think the naturalized foreigner should be placed on the same footing as a citizen. Let a naturalized citizen be required to remain one year in the State the same as a citizen and then be entitled to the exercise of the elective franchise.

Judge Hornblower.—I had prepared an amendment on this point, but had some doubts as to the propriety of the measure and am glad that it has now been brought forward. Judge Hornblower then read his proposed amendment, which was to the same effect, as that offered by Mr. Kennedy, and he continued I hesitated to offer the amendment as it involves a question of great delicacy and I was not willing to throw into the Convention any topic which might have the appearance of giving rise to doubts as to the honesty, patriotism, and pure republican views of the mover. A citizen of New York or Pennsylvania must reside here one year; he must be deprived of his elective franchise for one year, though perhaps born only across the river. By the report as it now stands, a foreigner who came to this country 5 years ago, and has resided in this state one year, should there be an election tomorrow, might be naturalized today, and be entitled to vote, and thus have an advantage over the native born citizens. My objections to the amendment are based on other grounds. I have been familiar with the course of proceeding in the Courts of Common Pleas and in other Courts for many years, and I can say I have often had my moral feelings and my sense of duty shocked by the scenes I have witnessed. On the eve of a contested election, the country is rummaged, if I may use the expression, searched over, and every foreigner, German, Irish, or French, who can find someone to swear that he has been five years in the country, and has resided one year in the State, is brought into Court in crowds and passed into citizenship. These foreigners under the influence of those excited by party feelings, are made to take oaths in the English language which they do not understand. I have seen Germans sworn upon these occasions, who could not read, or understand a word of English, and who did not understand the nature of

the oath administered to them. My object is to offer nothing inconsistent with their privileges, but to require that such a ceremony should be performed at a cooler moment, at least one year before they are called on to exercise the privilege of voting. This will prevent the fraud and corruption on both sides. The moral sense of the judges and the actors in these scenes, if they have any moral sense, must be shocked by the manner and circumstances in which this operation is got through with, if they are not blunted by the force and violence of excited party feelings.

And these foreigners are carried from county to county where these votes may be most required. It has happened that I have often been requested by not only my political friends, but by those of the other side, to keep my Court open in our county, to enable them to bring this motley crew, to have them naturalized on the day preceding an election that they may have the opportunity of voting on one side or the other. With that view I have prepared the amendment and should it meet the approbation of the convention, I should prefer it to the one offered by Mr. Kennedy.

I am sure I shall receive credit for sincerity when I say I have no party feeling to gratify. Eventually it can afford no advantage to either party. In doubtful counties, where the vote is nearly balanced, and where the canvass runs high, five Germans or Irishmen may determine the election, and the party bidding the highest for them often succeeds in getting these votes; by carrying them to other counties in carriages—by paying the fees for their naturalization—by treating them. The next thing is to get someone to swear to the facts and qualifications necessary to entitle them to vote, but some comrades of the person to be naturalized, will readily come up, and although ignorant of the language themselves, and perhaps not residents here for a year, they will take the necessary oath. It is one qualification that the party should possess a good moral character, and this too is sworn to by one entirely ignorant of it, who will readily swear that the person to be naturalized is of good moral character and attached to the principles of our government.—If we can, with true republican principles, and without violating any of the rights secured to foreigners by the laws of Congress, say that this ceremony shall be performed one year before they are permitted to exercise the elective franchise, we shall be better in the sight of Heaven, and receive the approbation of our fellow men. [G]He threw out these suggestions. He was not prepared to advocate the amendment, however.

[A]Mr. Ryerson. I regret to see the support which this amendment has received from the quarter where it has come. I have no regret on mere party grounds, but I regret it in consideration of the present state of excited feelings between the native born and the naturalized citizens. These feelings extend from one end of the land to the other, and who can say how much or how little it will require to kindle them to a blaze in the State of New Jersey. I have no idea that any party will be benefitted by this amendment but let us see what would be the effect, should it be carried.

A native of Europe may have resided among us from his childhood to mature age and he may have neglected to take out his naturalization papers, but seeing the importance of an approaching election he desires to do so:—this amendment strikes him off. It deprives him of the rights of citizenship. Now if we adopt this amendment and it goes abroad to the naturalized citizens of New Jersey, I ask you, gentlemen of this Convention,—I ask you Mr. Chairman, what will be the effect? It will fall like a firebrand among them, their feelings would be aroused to the highest pitch of indignation, & you could not get one of them to vote for this Constitution if you engraft on it this amendment. Why is it that a naturalized citizen should be deprived of his citizenship. The supporter of the amendment says that too many vicious and corrupt persons will avail themselves of this privilege. I grant you that is true; but because there are some bad men, are we to enact a law which will operate equally and unjustly on all? This single objection in his view should induce all to vote against the amendment.

Mr. Naar.—Being of foreign birth myself, it might be supposed by some, that I am influenced by national prejudices, but if my assurance will convince anyone that I am not so, I pledge myself that such is not the case, and my observations shall be made as a citizen, whose interest, whose feelings, and whose pride are identified with New Jersey. This amendment springs from a false construction of the word citizen. If my construction of that word is correct, no person can be a citizen of New Jersey until he shall have been entitled to the elective franchise. A citizen means a naturalized, or native, or permanent resident in a city, or county. But in the term as applicable to the U. States, a citizen means a person, native born or naturalized, who has qualified himself to vote, and to hold real and personal estate. This is the definition of the term as given by Webster, a Lexicographer whose authority, no member of the Convention, I presume will dispute. Suppose we introduce the word "citizen" here as proposed. It is surplusage, meaning one and the same thing. If any distinction is to be made at all, it must be made broader. They must say, no naturalized citizen not a

resident here one year shall be entitled to vote. Then the argument advanced by my colleague would be in point.

But on the views expressed by him, I remark, that the charge of corruption does not apply to naturalized citizens alone. If applicable to the debate, I could shew corruption and fraud, in persons born on the soil, and the members of the Convention cannot gainsay that. No, it is making a law to guard and protect us from the injuries which may be inflicted by a few improper persons, while it wrongs and injures hundreds of innocent persons.

It is the policy and interest of the State to induce persons to come here from other States. We throw out to them this boon—If you leave that land of oppression where you now reside & bring with you talent, fortune, industry and enterprize, we will give you a home with us. This is what we offer to people in other lands to induce them to come here. It is judicious—it is wise—we want all the aid we can get from other lands to increase the population of our country. We are not so aristocratical as to draw a line of demarcation, and to say to them thus far shall ye come and no farther. I speak, sir, as a citizen. I have discarded all allegiance, aye, all affection for my mother country, and why—because there I did not enjoy those sacred rights and privileges which I enjoy here! If I could have enjoyed those—the associations of youth and the affection of countless friends would have kept me there. But the deprivation of these rights severed all other ties. I discarded my obligations to my sovereign at a mature age, and took the obligation of an American citizen. I am here enjoying the blessings and benefits as such, but must I say to those who would follow me, you shall not share them? My case is that of the father and the grandfather of many of you who sit here. Will you say what they would not say? If there is a feature in the present Constitution which is worthy of estimation, it is that which entitles any person to enjoy the rights and privileges of an American citizen, or a citizen of New Jersey. I am in favor of adhering to the provisions of the old Constitution on this subject, and I trust that no one will be willing to draw the distinction stronger than it is.

Judge Hornblower—I foresaw the difficulties which would arise, and I had not determined to offer the amendment. If it will distract this Convention, or inflame the public mind, I am the last man to throw it out. I have no thoughts of party bearing, or injustice to the naturalized, but in view of the demoralizing consequences I thought it preferable to the first one offered. I agree with the assertion that more corruption and blame is justly chargeable on the native than on the

naturalized citizen in bringing forward this rush of foreigners. (Judge Hornblower speaks so low he can scarcely be heard at all by the reporter.)

Mr. Parsons—I am opposed to both these amendments. First, on the ground of making an improper distinction between a citizen of the U.S. and a citizen of this State. When a man becomes a naturalized citizen of the U.S. he becomes a citizen of this state, and is entitled to all the privileges of a native born citizen. The old Constitution makes no such difference, yet I am not willing this feature should be amended, I think the law of 1820 makes the necessary distinction and that places the citizen when naturalized on an equal footing with the native born citizen. We are to consider what we are to do, in extending the right of suffrage to a citizen of the U.S., who is a citizen of New Jersey. If made a citizen to-day or yesterday, they have an equal right to vote with a citizen who is born here. I shall oppose the amendments.

Mr. Ogden—The idea that the section as it now stands gives foreigners an advantage over citizens is incorrect. If fairly construed, there is no such intention. The object of 1 year's residence is that no one shall be qualified to vote until he is identified in feelings, principles and occupation with the citizens of N. Jersey for one year. The first line in the section refers to those who were born here, and if not, it would require that a native born citizen must be 22 years of age before he can vote, because the amendment requires a residence of a year after citizenship. I do not understand it so, and it appears to me that making this distinction, that an alien should be naturalized one year, will throw an impediment in the way of the adoption of the Constitution, which will not be compensated for by any supposed benefit to be derived.

Mr. Clark—I see no reason why we should not meet this subject because it is a delicate and sensitive one. Here I take it for granted, there is but one sentiment as to foreigners. We welcome them here as their asylum. We recognize them as brethren. I mean to cast no imputation on a man because he is a foreigner, but does this put the foreigner on a better footing than a native born citizen? Do we give greater privileges to foreigners? What is it but a year, a period of probation, in no period of which has he exercised his rights of citizenship. He must participate in institutions before he can feel their weight and power. He must feel the pulse of our land. He must feel the pulse of our atmosphere, and no man can know or appreciate them until he has felt and participated in all their ramifications. No man will deny that there is an evil existing, and if it is in the nature of things to meet and remedy it, let us do so. I know it is a delicate subject, and

the reason why I would approach it, is because it is sensitive and delicate and responsible. No foreigner can say I dislike him, but if there be an evil let us have no sensibility to meet it. The gentleman has not stated a fair case in supposing a man to reside here a life time without taking out his papers. That is an exception to the general rule. If he disregards his own rights, let him take the consequences. I am not prepared to vote on this, as I think further provisions may be made to meet the views of all. If this is the only way to remedy the evil, it should be adopted, and if, as in the view I take of it, it is no more than we exact of a citizen of another State, it is correct.

Mr. Dickerson—I think the states have not a control over this question. We have invited foreigners here, and although it is a matter of importance to increase our population, we have not been disposed to give them from the beginning, a participation in our government. They come here and are subject to all our laws, to be taxed the same as our citizens, and at the expiration of 5 years they expect to enjoy the right of the elective franchise, and the men subject to these burthens look forward with pleasure to the time when they shall enjoy it. Congress has put on 5 years, and if we can put on 1, we can put on 10 years more. We can say they never shall vote at all. We have, I think, no right to impose a further condition than that placed by Congress on the naturalized citizen. If we can take away his right to vote, can we not take away his other rights? I doubt our power to add to the restrictions placed on them by the act of Congress. If they do not understand our language in the time now fixed, Congress can fix a longer period, 10 or 15 years if they so choose. As to the charge of ignorance, it may be equally applied to many of the native born citizens, and indeed if ignorance of our language were to deprive them of the privilege of voting, it would operate severely in Pennsylvania among the Germans, and in Louisiana among the French. It is also said that the foreigner has an advantage over the naturalized citizen, but I cannot see it, for he is obliged to prove that he had a good moral character, while there is no such obligation on the native born citizen. I think if we impose this restriction on foreigners, the Constitution never would be adopted under such conditions.

Judge Hornblower hoped it would be withdrawn if every naturalized citizen would vote against the Constitution.

Mr. Kennedy—I see no reason to withdraw it—The question has not been discussed as it ought to be. The main question, "Is it right?" has not been discussed. It is said it may create a great excitement, but it is because this excitement is abroad over the land, this is now brought

up. This must be met, and if there is danger that the Constitution may be rejected by the naturalized citizens, is it not equally to be feared that it will be rejected by the native born citizens if this is not adopted? If naturalized citizens will object to what is right, they must abide by the consequences. The Constitution has fixed the time of naturalization, but it does not interfere with our election laws. The fact that there existed evils weighed in my mind, and induced me to offer the amendment. I am not willing to give foreigners the advantage. If the Convention is satisfied as it now stands, it gives foreigners an advantage by permitting them to vote after one day's citizenship and one year's residence. If this section gives this advantage, I want the Convention to decide, and if right to adopt the amendment, let the consequences be what they may. The question must be met, and if not now, it will come up hereafter.

Mr. Parsons. It is said, if this restriction is put in, the naturalized citizens will vote against the Constitution, and if not, why the native born citizens would do the same. There would thus be an inducement on one side and none on the other. The object of requiring one year's residence is, that at an exciting election, the people from other states shall not come over & control it, & therefore there is no hardship in the provision. It is necessary to secure the elective franchise from citizens of one state coming over and controlling the election in another.

Dr. Jaques expressed doubts as to the power of this Convention to act in the matter, on the ground that it would conflict with the provisions of the Constitution of the United States.

Mr. Hornblower. We cannot shorten the time of naturalization, but the Constitution and Legislative enactments may regulate the right of election in our own state. In Virginia a property qualification is required, and we have a right to say, although you are a citizen you shall not vote unless you possess some other qualification. That would not conflict with the law of the United States.

Mr. Ryerson. I should like to ask the Chief Justice a question. Suppose we have a right to adopt this, may we not with equal propriety fix the term of residence at 20 years before he can vote?

Mr. Hornblower. I will answer the gentleman by asking a question of him. If we have a right to say you must be worth $100 before you can vote, have we not a right to say, you must be worth $50,000?

Mr. Ryerson. I will ask another question, then.—Have we a right to say the naturalized citizen must be worth $100 before he can vote, and the native born citizen nothing.

Mr. Hornblower. The State of New York has done the same thing.

They say a white man without property is qualified, but a colored person must own so much.

Mr. Dickerson. The Constitution of the U.S. gives naturalized citizens all the privileges of natives.

Mr. Condit said he should feel disposed to let it rest, and see if some provisions could not be introduced to meet this point.

Mr. Wurts. I cannot mistake the signs of the times. This discussion is not necessary, and I cannot think the Convention will entertain the amendment. I cannot see the necessity of it on the grounds proposed by Mr. Kennedy, but in the shape as introduced by Chief Justice Hornblower, it is a grave and serious question. This point was discussed in the committee, and met with no favor. I should regret to see it adopted, for I think an excitement would be produced which would operate injuriously on the Constitution which we hope to submit to the people. I cannot see force enough in the position in which the amendment is placed to induce me to vote for it. I would rather submit to partial evils than to engraft on the Constitution a principle so odious, and one that would endanger its fate. These evils are but partial. I think also we would come in conflict with the laws of Congress. We should be extending the period of naturalization from five to six years. I am satisfied the amendment is one which ought not to be adopted. My mind is decidedly against it, and I have heard nothing to induce me to waver in my opinion.

Mr. Field. I honor the motives of the gentleman from Warren. I respect his course, and am pleased that he has not withdrawn the amendment, especially if no better reason could be urged than that, if the amendment prevailed, every naturalized citizen would vote against the Constitution. If I thought the amendment was right, I should vote for it, if every naturalized citizen should go against it. Is that an argument for this Convention, because the naturalized citizens would not accept the Constitution? I concur with the gentleman from Hunterdon that it is our duty to approach the subject, because it would excite sensibility, and in that I see an additional reason for meeting it. It is a question of vital importance which comes home to our feelings, to our hearts. But while I am glad it is presented here, I cannot concur with him at all in believing that the amendment should prevail, and I hope I may be able to prove that the distinction drawn by him is false and imaginary. He is willing the naturalized citizen should be on an equal footing with the native, but not to have any discrimination in his favor. I submit the question should we make such by not adopting the amendment? What is required—First, that the

party should be of the age of 21 years, as the presumption is that he has not reached years of discretion before that—next, that he shall be a citizen of the U.S. This may be necessary, because if he be not such, he may owe allegiance elsewhere. Next, that he must reside in N. Jersey one year:—and why is this? that he may have an opportunity to observe our laws, our institutions, and our form of government. I ask why naturalized and native citizens are not to be placed on the same footing? we require the age of 21 years for both; we require that the native should be a citizen, and the naturalized party a citizen, and then we require that both should reside in N. Jersey one year. But it is said a person from Pennsylvania must reside here one year, while a naturalized citizen may vote the day after he is naturalized. The citizen from Pennsylvania must reside here one year without the right to vote, and the only reason is, that he may observe and note the character of the people and of our institutions. And does not the foreigner have the same privileges? Is there any distinction? It appears to me we place the citizen of Pennsylvania, and the naturalized citizen on a footing of perfect equality, and there I desire to put them—I should not be willing to discriminate between them. The question is not whether foreigners are naturalized with too much facility. It is not for us to say whether foreigners should reside a longer period among us before exercising the rights of citizenship—we have nothing to do with that, as that power is delegated to Congress alone, & we must submit to such laws as they may enact. If they are wrong let us apply to that power which can alone correct it. We first court and caress the foreigners—we beg and bribe them to become naturalized. Every foreigner is, as has been aptly said, hunted up—advantage is taken of his ignorance to induce them to become citizens and when the power we have invoked becomes formidable, we run to the other extreme, and pursue a course which deprives them of their rights as citizens.

Mr. Browning—I concur in the object proposed by the mover of the amendment and had prepared one, word for word almost, to submit. I shall place my vote on this ground. I look upon the ballot box as the ark of American Liberty. That, as far as New Jersey is concerned, is committed to our keeping, and the liberty of this country and this State, cannot be kept pure, unless we keep the ballot box uncontaminated. It cannot be denied that corruptions exist—that there are frauds in our courts, demoralizing to our people, and contaminating the panoply of liberty. Does it then become us to compromise with these evils? It is because I would preserve the principles of American

Liberty pure and unspotted, that I am in favour of the amendment. That there are corruptions existing, is admitted on all hands, and whether found only in the alien born citizens, or in our own citizens, it makes no difference. It is at the corruption I aim, and to avoid that, I am in favor of the amendment. If I understand the gentleman from Warren, that as the Constitution provides for the rights of citizens in other States, we have no right to make a distinction. The Constitution makes a distinction between the alien and the citizen—(Mr. B. referred to the qualification as President of the U.S. and Governor of N. Jersey). And may we not make a provision that no man shall exercise the right of suffrage for any length of time we may choose. Every natural born citizen must have been a citizen 21 years. This only requires that an alien should reside here 1 year.

Mr. Naar again briefly opposed the proposed amendment.

Mr. Halsted—I regret that, from the course the debate has taken, any member should be supposed to have voted against this measure on party grounds, or from an apprehension that the Coustitution would not be accepted. I rise simply to protest against the idea that the convention could be brought to vote on such a ground. I vote simply on the question, whether it is right or wrong. The objects are, that we have corruption at the polls. That the desire of this convention is to preserve the purity of the elective franchise. I agree with all this, but my proposition is, that this is a matter for legislation. I might agree that it would be wise to adopt some mode of registry, but I would refer this also to the Legislature. I should have no objections to adopt an article that the Legislature may enact a registry law, but I do not believe there is necessity for it.

The ground of corruption is not one on which the convention can act. The law formerly stood that no man could vote unless a tax was laid against him, and that was a source of corruption. The objection was in every man's mouth that men were bought. That was the extent of the objection—the fear that corruption had taken hold of the people. But was this confined to naturalized citizens? No, the objection was as sound as to our own as to naturalized citizens, and what was the result? The law was repealed, so the idea of corruption as applicable to this class of our citizens is entitled to no weight at all. The matter must be left to the Legislature. If the laws of N. Jersey cannot provide against corruption & bribery, we are in sad state indeed. I will not suppose such a state of degradation as not to be able to provide against corruption and bribery at the ballot box, and if we are in such a state, no article in the constitution can relieve us.

But not only does the law of the U.S. require a 5 years' residence, but that a person who contemplates becoming a citizen, shall declare his intentions 2 years before taking out his papers. Mr. Halsted proceeded to point out the advantages of this provision requiring a declaration of intention 2 years prior to taking out the papers, and concluded his opposition to the amendment on the broad ground that it would be adding another year to the term prescribed by the constitution.

After a few desultory remarks, the question was put on the amendment and it was lost.

Mr. Ryerson moved to add to the end of the article, "Laws may be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established."

Mr. Vroom thought the Legislature already had that power, and that it was not worth while to do more than define principles.

Mr. Hornblower thought, that there might be differences of opinion as to whether or not the Legislature had this power, and he thought it would be better to settle it at once.

Mr. Condit was in favor of the amendment, and Mr. Parsons opposed it. Not agreed to.

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

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

[G]Mr. Wood offered a resolution that when this House adjourn, it adjourn to meet on Monday afternoon. It was impossible to act intelligently upon any of the reports until all should be in: and we were informed that no more of the reports would be presented before Monday afternoon. At present, he felt that he was acting in the dark, until we could have the whole framework of the Constitution before us. He believed a great deal of the discussion we have already had, might have been saved, if all the reports had been in.

Messrs. Hornblower and Parker objected, and Mr. Wood withdrew his motion for the present.

On motion of Mr. Pickel [J]the convention resolved itself into committee of the whole, Mr. Stites in the chair, upon the consideration of the unfinished business of this morning, being the report of the Committee on the Right of Suffrage.

[G]Mr. Pickel moved to strike out paupers from the list of persons deprived of the right of suffrage. [A]He said his object would be plainly

ascertained. It was to protect this portion of our unfortunate fellow citizens. There are in some of our Poor houses, citizens whom misfortune has placed there, and whose station in society has been such, that they should not be deprived of the right of suffrage—They are associated among those who have been convicted of crimes and he did not like to see it—He did not think it was right they should be associated together.

Mr. Jaques rose with pleasure to second the amendment. He hoped and trusted that these two classes had been associated together by the committee without reflection. Poverty is not always a crime. It may be produced by misfortune as well as vice. And shall we add to it this deprivation? The poor have certain rights in common with others—those of life, liberty and the pursuit of happiness. They are the same people and speak the same language as ourselves, and ought not to be deprived of their rights. The poor man, though he may be the inmate of a poor house, often feels the greatest interest as to who shall be intrusted with making the laws by which he as well as others is to be governed. He hoped the amendment would not lead to debate, but that it would be silently and unanimously adopted.

[G]Mr. R. S. Kennedy wished to know where the paupers were to vote, if the poor houses were to be opened—in the township where the poor house was situated, or were they to be sent to that township to which they belonged.

[A]Mr. Pickel. That may be left for future legislatures.

Mr. J. R. Thomson said if no one else did it, he felt bound to say a word as one of the committee which made the report. This matter was considered in committee and it was, he believed their unanimous opinion, that paupers should be excluded from the right of suffrage. They thought, I believe, at any rate I do, that when a man is so bowed down with misfortune, as to become an inmate of a poor house, that he voluntarily surrenders his rights. I believe it is so considered in law. He parts with his liberty—he loses his control of his children and he labors for others. These with other considerations led the committee to their decision.

We all know the conditions of the pauper in the poor house. You may talk of his sensibilities if you please—but a man does not enter the poor house till after every other source fails. I hold it to be idle to talk of his interest in enjoying the right of suffrage, when he is obliged to beg for a loaf of bread! How humiliating a sight would it be, sir, to see a band of these paupers led up to the ballot box; and deposit their votes by the tricks of their master! That is the case, sir!

He is their master. Their children are bound out by him, I believe with the consent of two Justices. Are their rights taken away from them? No, sir. It is a voluntary surrender by unfortunate men, who are compelled to claim charities of the public. Can we regard them as free agents? as qualified to vote? No, sir! No, sir!

I will say nothing more now. These are the general views of the committee thrown out for the consideration of the house.

Mr. Child inquired whether a difficulty would not arise at the polls as to who is a pauper. Is it he who lives in the poor house, or he who receives only a temporary support from the town? It might exclude more than we are aware of. Here are a great many who receive occasional assistance, and they would be challenged because they were partly supported by the people. It is true that the legislature might remedy it and perhaps they would.

Mr. Hornblower said a pauper was one who actually received relief from the overseer of the poor, whether in the poor house, or residing in some other part of the township or in the house of a relation. If he receives aid from the public funds or charities, he is a pauper.

He did not like however, to see paupers classed with idiots—insane persons, and persons convicted of infamous crimes. He would like to see the case of paupers provided for in a separate paragraph, and that they should be entitled to vote in the township upon which they are chargeable—and he hoped therefore the words "or paupers," in their present connection would be stricken out.

Mr. Ewing said that by the report no property qualifications to voters were required. We have made a liberal extension of the elective franchise, and now it is proposed to exclude persons, who from misfortune have become inmates of a poor house!

He had been for more than twenty years a Trustee of one of these institutions, and had seen old persons who had evinced the strongest desire to enjoy the privilege of voting in our state.

The Convention which met in our county, instructed me especially, Sir, in favor of the principle of this amendment—of giving paupers the privilege of voting. They consider that those who are laboring under misfortune are still entitled to this inestimable privilege, and I recognize that doctrine. I have known many of these persons who received public support—persons who have filled important stations in society, and who still look at our public affairs with the greatest anxiety; and when by misfortune they are deprived of all their comforts, will you refuse them this last privilege? The Legislature may provide that the privilege shall not be abused—but surely this conven-

tion will not say that those who by the vicissitudes of war or other calamities shall be deprived of their all, shall likewise lose this great and blessed privilege. I have been instructed, sir, to support this amendment, and I do most cheerfully support it, and I hope that the claims of this unfortunate class of our fellow citizens will not be disregarded —particularly where no property qualifications of any kind are required.

Mr. Naar out of respect to the suggestion of his friend from Middlesex should have said nothing, if some remarks from the chairman of the committee had not rendered it necessary. He has said that these paupers have made a voluntary surrender of their liberties. A strange declaration! Does any one of his own will and choice become a pauper?—No one, sir, except from the necessity of the case! I think the gentleman upon reflection will feel that he has advocated a proposition that is untenable—See upon whom it will operate: Upon men who have served their country in the army and Navy—upon soldiers who have fought and bled for their country, and some of whom may have helped to regain its liberties! Shall they be deprived of the right of voting? There is another, and more numerous class of men who are entitled to the good feelings of the country—the working men. They are sometimes bowed down by misfortune, and shall they be deprived of the right of voting? Which of us can say that some day or other he may not become a pauper? Will it be fair that one of us who has put his name to this constitution shall be deprived of this privilege? It will be fair for those who vote against the amendment, but not for those who vote for it. [G]The evil adverted by the gentleman from Mercer,—of their keeper exercising an undue influence over these unfortunate men,—might arise, but it might be guarded against by legislation. [A]He hoped the amendment would prevail.

Mr. Pickel was sorry to intrude upon the Convention. He had been for more than 20 years, an overseer of the poor, and he had seen citizens of the first families in our State borne to the poor house from misfortune: and now shall we set a mark upon them and rank them with criminals? Paupers will seldom come to vote if they have the privilege that is dear to them. He would not occupy time. He supposed the minds of members were made up and he should leave them to discharge their duty to their constituents and themselves.

The amendment was agreed to.

[G]Mr. Hornblower moved to amend by adding a provision that persons receiving aid from the overseers of the poor, whether residing in a poor house or not, should be entitled to vote in the township of their residence.

Mr. R. S. Kennedy thought this would render much legislation necessary. It would be necessary to get an order of two justices of the peace to take them from the poor house.

Mr. Hornblower withdrew his motion.

Mr. Child moved a verbal amendment in order to give the legislature power to pass registration laws, laws requiring townships to vote by ballot, &c. Not because he approved of registration laws. He disapproved of them. But if the people of particular parts of the state should wish such laws, he was in favor of their having their wish, and of the legislature's having authority to gratify them. He was in favor of this, because he wished the majority to have their way.

Mr. Clark advocated the amendment as necessary to clear of all doubt, the right of the legislature to prescribe the manner in which the right of suffrage should be exercised. [A]There might be a question whether without this amendment, a registry law would not be an infringement of the constitution.

[G]Mr. Vroom thought the amendment unnecessary. You can't vote except in the way the legislature prescribes. They must prescribe the manner of voting. But the mover of this amendment was mistaken, if he supposed it would authorize a registry law. Such a law touches the qualifications of voters, and not the manner of voting. [A]If gentlemen wish to make a proposition for a registry law, let's see it.

[G]Mr. Clark contended that a registration act would regulate the manner of voting, and therefore come under the language of the amendment.

[A]Mr. Hornblower would be glad if some door could be left open for a registry law, when it was wanted. He did not think it was required now:—but in some parts of the State it might soon be necessary and useful and essential in the preservation of the peace, and to prevent rioting and contentions at the Polls. He would instance the city of Newark which although the smallest township in the State in point of territory possessed a population of between 20 & 30,000. The population is floating. They are there today and away tomorrow. It is very difficult to tell who are entitled to vote and who are not. We are near New York, and on the great thoroughfare between that city and Pennsylvania, and the South. The city, he was glad to say, was improving in population, enterprise and prosperity, and he hoped though he could not reasonably hope to see many more years, to see the population doubled. But the time may soon come, in ten or twenty years perhaps, when it would be necessary to secure the right of the legal voters to have a registry law. He hoped therefore the door would be

left open for it, here or in some other place.

Amendment not agreed to.

[G]Mr. Wood moved to amend by adding "laws may be passed requiring voters to be registered." He was opposed to registry laws; but he wished to test the question fairly.

Mr. Hornblower moved to amend by adding "in such counties, townships, or cities as the legislature shall deem expedient." Not agreed to.

The amendment of Mr. Wood was not agreed to.

Mr. Zabriskie moved to amend so as to exclude "students who had taken up a transient residence for the purpose of education."

[A]Mr. Wood asked if it was necessary to insert all these things in the constitution.

[G]Mr. Zabriskie thought it was necessary to settle a point of considerable difficulty in those places in which colleges are situated. [A]Mr. Zabriskie did not wish to encumber the constitution but to guard the rights of the native citizens of the State. These students do not lose their residence at home. They come here for a temporary purpose and often do not remain here a year together, but still claim their vote here. The question whether they are entitled to vote is decided in one way at one poll and differently at another and he thought it should be settled in the constitution. There is another consideration. The students in the college at New Brunswick, if they should all vote upon one side, would often control the election in the county. Would this be right that these persons who are in fact *aliens* should deprive of their power, the native citizens who had always resided there? He said that his views agreed with the law upon this subject passed by the last Legislature.

[G]Mr. Hornblower said he came here to make all proper concessions and vote on general principles and as if party lines had never been drawn in this state. He had done so. He had not acted in one instance, upon party views. He regretted this motion more than any which had been offered in this convention; and if a sweeping clause of this kind should be introduced into this constitution he would never vote for the instrument, either here or elsewhere.

What is its object? It is to put a mark on men who come to the state seeking an education,—seeking the improvement of their minds. A man may come here for any other purpose—to obtain employment as a hostler in the stable of a tavern, intending to remain only while he can get work, and he is entitled to vote; but if he leaves his father's and mother's house after he is 21 years of age, to seek an education

in one of our seminaries of learning, and often to earn at intermediate hours the means of obtaining it—if he abandons his residence at home—nay if he even brings his family with him—yet unless he determines to live in the state permanently he is to be told you are not to be permitted to vote. I have no doubt there are now many men in distinguished places in this state, who in the last ten or twenty years, have left their homes with no expectation ever to return,—who have left their father's house for good and all, and come to Princeton or New Brunswick, in the hope of procuring a school as the means of paying for their education—living year in and year out by their own hard labor—sometimes even by cutting wood—who came here for, (in one sense) a temporary and not a permanent residence, that is to say until Providence should call them elsewhere, or as long as they could support themselves. There are many of these students who expect never to return to their native state, nor to remain here but for a course of study.—They labor for their support. They earn money. They pay taxes; but they know not whether they shall remain here three months or thirty years. When they get through their studies, many of them are called to the pulpits in the state. Others are often called elsewhere to places of usefulness. Now will we insert a provision in our constitution the tendency of which will be to deter such persons from our state, to shut up our colleges and hold out to the universe that we are a people so illiberal, so narrow, so contracted that if persons shall come here for any common employment they shall have the rights of citizens, but if they come here for an education they shall not have those rights, unless they determine to reside here permanently?

I hope, sir, this motion will not pass. I hope we shall leave the broad principle of suffrage as we have adopted it, without any of these restrictions. If we do not—if we adopt this amendment, the constitution never will be adopted. For sir, if any thing in the proceedings of the last legislature excited indignation in our part of the state, it was this very measure which is now proposed here. Sir, the people never will adopt a constitution containing such a feature; and I repeat that if it be inserted, I will never vote for the instrument either here or elsewhere, and more, I will exert my powers to promote its rejection by the people.

Mr. Ryerson hoped the amendment would not be passed. It would excite much feeling both here and elsewhere.—It was altogether unnecessary and he would say that he for one would not desire to be a citizen of the state which should make such a provision a part of its fundamental law. What, sir, will be its effect? It would aim a blow at

our distinguished colleges and seminaries of education—institutions of which we and the state are proud. As a graduate of one of these institutions he felt called on to oppose the amendment; and he hoped the good sense of the committee would reject it.

[A]Mr. Naar was not influenced by the threats which had been thrown out, but thought the amendment improper on its own merits; and opposed it with zeal and ability. [G]We have adopted most liberal provisions as to the right of suffrage; and we have done well. Why now shall we make invidious distinctions between persons in colleges and others. Sir, it would be a reflection on the state. It would be injurious to our character as a people honoring talent, and mental power and literary eminence. What! shall we say that any man who comes here and resides among us, for any pursuit, shall be entitled to vote, without regard to his occupation, and then add an exception that if he come for an education, he shall not be permitted to vote?—I trust not, sir, and I hope the motion will be withdrawn.

Mr. Zabriskie acknowledged in warm terms the liberality of the course of the Chief Justice, [A]to grant to citizens of N. J. all the rights which they can claim. He honored him for his liberal principles [G]and the great ability with which he had maintained his positions. Both had commanded his high admiration. It was not his (Mr. Z.'s) purpose to throw a firebrand into this convention. But there was a precedent for this amendment in the law of the last legislature and in the constitution of Maine [A](which provision he read.) *There* is a precedent for it beside the late act of our own Legislature. [G]For himself, he went for the right of suffrage to the fullest extent. He believed that in the principle adopted in this report, we go as far as man can go. He would not prescribe nor proscribe any man or set of men—much less those who lived upon the most honorable labor—those who earned their bread by the sweat of their brain. He honored, he did homage to intellectual greatness. But this amendment invades none of the inherent rights of students. It does not leave them without the elective franchise. That is perfect in the state from which they come, and they may at any time go home and exercise it. Shall we confer upon them a double right? Does not the amendment carry out the principle of equal suffrage?

But, sir, I do not wish to disturb the harmony of this convention. I have not obtruded myself upon it. I have rarely spoken, and more rarely have I proposed an amendment. [A]He would sit down and hear the views of other gentlemen. He would be glad to withdraw the amendment, because the Chief Justice wished it, although he could

not be deterred by threats—and he would do so if the members were not in favor of it.

Mr. Parker. The better way will be for the chairman to ask those in favor of the amendment to rise! (Laughter.)

[G]Messrs. Parker and Allen would rather take a vote on it.

Mr. R. S. Kennedy would rather if it could be done, expunge the motion. He was surprised the gentleman should dare to offer it: and although the last legislature did pass such a provision, he did not expect that their example would have been adduced here as a precedent. Sir, we have had men voting here for the largest liberty—against all restrictions—but now the gentleman from Middlesex, takes a back track, and would exclude a whole class. Next he may want to exclude the mechanics—next the farmers—and so on until none but the lawyers and some others are left.

Mr. Hornblower disclaimed having intended any imputations upon the motives of the mover of this amendment. His course here had been such as had excited his admiration, and he had not thrust himself forward upon the convention.

Mr. Parsons would say a word to induce his friend to withdraw. We have stricken out paupers. Shall we insert a class of highly respectable men. And how does he know these men have a right to vote elsewhere. They have come too, from a distance,—often a great distance—and will he compel them to travel hundreds of miles or lose their vote?

Mr. Vroom would not insert this provision unless it should be well guarded in its terms and he thought it better to leave it to legislation. But so far as it went to exclude from voting young men who come here and spend nine months in a year, intending to return home, the principle is right and he would stand by it.

Mr. Zabriskie obtained leave to reply to the gentleman from Warren. That gentleman had asked (said Mr. Z) how I dared take the responsibility of this amendment. I'd have that gentleman to know that I dare take any responsibility that I deem right, either here or elsewhere. And furthermore, why did he cast a reflection on the last legislature? Why may not that legislature be referred to as well as any other? I had supposed that no gentleman would dare to take the responsibility of making such remarks. After these remarks, I withdraw my amendment.

A number of amendments to the phraseology were proposed, discussed, and disposed of; and the section agreed to.

[A]Mr. Browning suggested that some ambiguity might arise upon the construction of that part of the article which excludes those con-

victed of crimes for which there is an *infamous punishment*. We have no such punishment in N. Jersey. In England it is *cropping* on the *pillory*. Our punishment, is fine or imprisonment. In N. Y. those are excluded who are convicted of *infamous crimes*. That undoubtedly refers to the *crimen falsi*, or felony: he thought it would be more definite to insert *felony at common law*, which words have a technical meaning.

Several amendments were offered: to exclude "those convicted of crimes which exclude them from being a witness"—To specify the crimes, which should be the same as those in the act excluding witnesses. None were agreed to, so that the article remains (in that particular) as reported.

The words "an inhabitant" in the first sentence, were stricken out and "a resident" inserted. Also the words "as acquiring a residence," in the second sentence and "a resident" inserted.

Mr. Hornblower said that there was nothing said in the article about voting by ballot. He offered an amendment that all voting shall be by ballot except when otherwise provided for at town meetings—not agreed to.

Mr. Randolph moved to strike out "or theft"—(which excludes from voting)—not agreed to.

Mr. Ten Eyck moved to strike out theft and insert larceny above $20—not agreed to.

[G]Mr. Clark moved an additional section, providing that no person born in this state after the adoption of this Constitution, should be entitled to vote, when he became twenty-one years of age, unless he could read the English language.

Mr. Sickler. Good!

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

[G]Mr. Wood renewed his motion to adjourn to Monday afternoon. Not agreed to.

[J]Mr. Ewing asked leave of absence during the morrow;

Which was unanimously granted.

Mr. Elmer asked, and obtained leave of absence during the morrow.

The convention adjourned till to-morrow morning, at ten o'clock.

[J]SATURDAY MORNING, 25th May.

At ten o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Kidder.

[A]Mr. Wurts who had been elected Vice President took the Chair, Gov. Williamson being absent, and returned thanks handsomely for the honor conferred on him.

[J]The convention [G]on motion of Mr. Wills [J]resolved itself into committee of the whole, Mr. Haight in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on the Right of Suffrage. [A]Mr. Hornblower moved to reconsider the vote on agreeing to the 1st section for the purpose of offering an amendment.

Mr. Dickerson was sorry that the course had been taken last evening with reference to the 1st section by adopting it. The motion to reconsider was carried, and Mr. Hornblower moved to amend the section by striking out all after the words, "convicted of," and inserting "a crime which now excludes him from being a witness, unless pardoned, shall be and enjoy the right of an elector." In support of this he urged that there was a great distinction between an infamous crime and an infamous punishment. Assault and battery is not an infamous crime but the punishment which follows it in the State prison is infamous. There are many and valuable citizens who may be convicted of this offence and it would not certainly be considered so infamous as to render them unworthy of being entitled to a vote.

Mr. Browning. I am in favor of the amendment—Any person convicted of this offence, who may be senteneed to imprisonment for a day or week or month, would by this section be excluded from the right of suffrage, and the punishment for this offence ought not to exclude them. Such certainly cannot the the intention of this Convention.

Mr. Vanarsdale thought the amendment too important to be acted on in so thin a house, (there being a bare quorum present.)

Mr. Randolph moved to strike out the whole proviso and insert one which he offered, of somewhat similar import but

Mr. Browning hoped the vote would be taken on the 1st amendment. A person might now be convicted of a burglary and sentenced to imprisonment for 5 years and at the expiration of his term of service he should become a competent witness. The idea is that when a man has been convicted of a crime which would render him incompetent as a witness, he should be excluded from the right of suffrage.

Col. Zabriskie thought the amendment too important to be debated now, and he moved a postponement.

Mr. Pickel. If we postpone the matter we may as well adjourn at once. I think we are unanimous here upon this amendment, and I do not see how the difficulty could be got over better than by adopting it.

Col. Zabriskie withdrew his motion to postpone.

Mr. Randolph. Could not some other word be substituted for pardon?

Mr. Hornblower. I do not know as a pardon restores the right of citizenship.

Mr. Clark. Yes Sir.

Mr. Randolph. My object is that the act may be retrospective, and to leave the matter to the Legislature to act on it hereafter.

Mr. Allen. It is a common practice with convicts, who have conducted themselves with propriety to apply for a pardon that they may be restored to their rights.—In the word pardon, I am in favor of the amendment of the Chief Justice. If a person convicted of a high crime is intended to be disqualified from voting, let the convention say so.

Mr. Randolph. I think the word hereafter should be introduced—as the amendment now stands an innocent man may be convicted, as we know is often the case, and he can never be restored to his rights.

Mr. Parker. I object to this as it gives the Legislature the power to alter the Constitution. I would rather the Convention should settle it definitely. I have known persons convicted of a libel for telling the truth, and in this case, the disqualification would extend for life. I dislike leaving this power to the legislature, as in high party excitement it may be so extended as to operate most unjustly.

Mr. Randolph moved to insert the words "or restored by law to the right of suffrage."

Mr. Hornblower. The difficulty seems to be in the word "now." No more severe punishment can be pronounced on a man than to disqualify him as a witness—to say he shall not be believed on oath. Besides it may be very injurious to the rights of other parties. A man thus situated may be a sole surviving witness to a will, and it would be hard to deprive those interested in his testimony such as it was. It would be unjust to them, and ignominious to the offender. I hardly think the Legislature would adopt such a course. I have no objection to accept the amendment.

Mr. Parker. This is more like making a law than declaring a fundamental principle. I shall oppose the amendment, because I think the enactment should be left to the Legislature. I would strike out all

with reference to disqualification and leave it to the Legislature to pass laws on the subject. They may pass laws excluding from the right of suffrage persons convicted of high offences, and if inconvenience should result, enactments might be made from time to time to remedy the evil.

After a few words from Mr. Hornblower the amendment proposed by him, with the addition made by Mr. Browning was adopted—and the section was postponed for the present.

A motion that the Committee rise and report, on account of the small numbers present was made and after some discussion lost, and the 2d section was then taken up.

Col. Zabriskie moved to strike out the word inhabitant in the 2d line and insert resident, as it had been so attested in the 1st section.

Mr. Hornblower objected as it was unnecessary.

Mr. Clark thought the amendment a proper one. A person who may be a candidate for these offices should not only be a resident but an inhabitant. I would permit many a man to vote, for whom I would not vote myself. A man may be a resident and not an inhabitant, but I should choose to have a representative both. He should not only be a resident but he should have his habitation, his home among us.

Mr. Browning moved to insert the word resident also.

Mr. Zabriskie. Are they not synonymous?

Mr. Randolph. No, sir. I can give an instance explanatory of the matter. A gentleman residing as a clerk at Washington was elected to Congress from one of the New England states, but he was excluded from taking his seat, on the ground that by the constitution he was not an inhabitant of the State, although the *animus revertendi* was clearly proved.

Mr. Zabriskie thought the matter had better be postponed until he could consult Crabb's synonyms.

Mr. Parker. The meaning of the term can be got at by referring to our own Laws. Our townships are all incorporated, and the word inhabitant with reference to voters is the one used, and not resident.

Mr. Naar. Suppose a citizen of New York should move into this state with his family. He remains here 6 or 8 months or a year, and then is called east or west by business where he remains 2 years. He returns and is put up as a candidate. Is he eligible or not? Is he an inhabitant according to the legal construction of the term? I ask for information, as on that point the whole matter rests.

Mr. Parker. Unquestionably he is eligible.

Mr. Naar. Then where is the distinction between a resident and an

inhabitant?

Mr. Hornblower. I will answer the question. A man may come to this state and work for a year. He will be an inhabitant, but he may have a residence elsewhere. If he becomes an inhabitant for a year, he is entitled to vote.

Mr. Naar. This explanation does not answer the objection. If a man comes to this state to work and remains a year, he is not a resident.

Mr. Clark. Inhabitant is a home-bred word. Resident is a manufactured term. An inhabitant is a man who has his home here. A resident may be an inhabitant, but it does not follow. He may be a resident without having his home here, or he may be an inhabitant and not a resident. We ought to require that persons eligible to these offices should not only be inhabitants but residents. We ought not to take up a man as a candidate whose feelings are detached from New Jersey and its interests.

Mr. Zabriskie again moved a postponement, that he might consult Crabb.

Mr. Vroom thought they could settle the question without referring to Crabb. In the understanding of many there is a distinction in the terms, and the word inhabitant has obtained a large signification. It is said that the term resident when applied to a voter, or the qualification for an elector, has not the same meaning as when applied to a person to be elected. A man to be an inhabitant must reside continuously in the county. He may be a resident if he lives here a part of his time and a part in Philadelphia. This is his family residence. I think as the words are used in our laws, and in the old Constitution, they are synonymous. Under the old Constitution, a party to be eligible to office must be a resident. That was well understood. The terms are synonymous, and I think we had better not make a distinction between them.

Mr. Hornblower. Let me advert to a discussion on this subject, which took place in this very Hall twelve or more years ago. Mr. Southard was Secretary of the Navy then residing at Washington, and he was a candidate for the office of Senator from this State. The subject was fully discussed, and the majority decided not to elect him, as he was not an inhabitant of the state, but had his habitation in Washington. On the other side it was said that the terms resident and inhabitant were synonymous, but the Joint meeting refused to elect him, as he was not an inhabitant of New Jersey.

The motion to strike out the word inhabitant, and insert resident

was lost, as was also the motion of Mr. Browning to add the word resident.

Mr. Browning moved to insert the words "of the United States," after the word citizen on the second line, which was lost.

Mr. Hornblower moved that the committee rise and report, as he thought they were now only wasting time, as many gentlemen who were absent he knew had amendments to offer.

Mr. Vroom opposed the motion, and censured the conduct of the gentlemen who had left, after having yesterday voted not to adjourn over to-day, and he thought that by adjourning they should be giving a sanction to the course pursued by them.

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

On motion of Mr. Pickel, it was

Ordered, That when this convention adjourns, it will adjourn to meet on Monday afternoon, at three o'clock.

The convention then adjourned to Monday afternoon, at three o'clock.

Monday afternoon, 27th May.

At three o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Reed.

The convention resolved itself into committee of the whole, Mr. Stites in the chair, upon the consideration of the unfinished business of Saturday, being the report of the Committee on the Right of Suffrage.

Mr. Clark called up the article offered by him on Friday, as an additional article, providing that no person born after the adoption of this Constitution, shall be entitled to vote, on his arriving at the age of 21 years, unless he could read the English language, except in case of physical disability.

Mr. Clark said he took it to be the intention of the Convention to establish universal suffrage. We have adopted no property qualifications. The rich and the poor we have placed on the same platform. But, it seemed to him, we ought to require some qualifications, and

the least we can require is this very simple manifestation of intelligence. It has passed into a proverb, that liberty is based on the intelligence and virtue of the people. Let us carry out this principle of our faith. [A]If universal suffrage be the spirit of the age, let us make its operation a sound and safe exercise of power. It will be the language of the republican freemen of N. Jersey that they esteem the qualifications of the mind, superior to those of property. Its tendencies will be the elevation of the character of our State and it will inspire as it should, a just pride in the hearts of its citizens. It will be a silent but effectual stimulus to education and the future fathers and mothers of our soil will be prompted by the inducement of the exercise of the highest evidence of citizenship, to the education of their sons.

It operates on no living being, and therefore can offend no one. Its effects on suffrage are prospective,—on education almost immediate —when it shall cease to be viewed as a novelty, it will commend itself to our judgments, and to N. Jersey will belong the honor of taking this lead in the family of States.

[G]Mr. Jaques thought there would be difficulty if this should be passed without some qualifications. It would next be necessary to provide for universal education; otherwise, this would be a blow at the poor, and would be following the aristocratic principles of Great Britain. If gentlemen are prepared to provide for the universal education of the poor, I will go with them in this movement, but not otherwise.

[A]Mr. Dickerson thought that taking away the rights of these individuals to vote was a heavy penalty. It is not their fault that they cannot read but that of their parents: and if you will adopt a provision to make the parents educate their children, it will be a better one.

In some parts of our State, I believe, the natives do not speak the English language—and I think this is the case among the old knickerbockers of Communipaw. In Pennsylvania there are a great many who cannot read or write. If you are traveling there you cannot even ask your way of them. They are citizens of the U. States and may become so, of this State—and if so, will you exclude them from voting? [G]We have no control over parents of other states and foreign countries. If they neglect to educate their children, shall we exclude them from the right of voting when they come here? We had better refuse to naturalize them altogether. [A]You had better go farther, and say they must read the English language *well*—or whether they must be able to read *writing* or *printing*: and by and by you will say they must be able to read some other language—and soon that they must be able

to repeat the multiplication table. It was made a great complaint against Andrew Jackson at one time that he couldn't speak his own name! He called it *Yockson;* and he couldn't pronounce *Michillimackinack* either! [G]It was said General Jackson couldn't spell his own name—he used an o instead of an a; and this was made an argument against his election. [A]He did not wish to turn the subject into ridicule, but he saw many inconveniences and no good to arise from the amendment.

[G]Mr. Clark said he had foreseen that this would be regarded as of immediate operation; but it will be 21 or 22 years before it can effect any restriction upon the right of suffrage. He suggested to the gentleman from Middlesex, that instead of its working any injustice to the poor man it would be to him a measure of entire benignity, and by means of it he believed that before 21 years, education would be made the common property of all men in New Jersey. We are not far from it now. Every father now may have his sons taught to read; and if it had been in operation for ten years there would not be a voter now who could not read. Let fathers understand—let mothers understand, that before their sons wear the livery of American freemen they must be able to read; and it will do more than anything else—vastly more to secure the education of the poor [A]than all your legislation. So far from aiming at the poor, this Convention has shown, by striking out the words which excluded paupers from voting, that they do not aim at them: and he thought scarcely anyone could be found, however poor, who could not, to this extent educate their children. The moral effect of it, too, will be incalculable. It will induce habits of economy and industry. You cannot speak of the diffusion of intelligence without associating the love of moral order and of the proprieties of life. If we can induce the community to educate their children, let us do it.

[G]The gentleman from Morris said this would be a heavy penalty. It would indeed: and to avoid it, is the inducement it offers to every parent to educate his son. The gentleman also asked what we should do respecting those who do not speak our language. We are not making a constitution for Germans, French, or Spaniards, but for ourselves; and if these wish to enjoy the benefits of our government, they must come up to our platform. [A]He wished no hasty or inconsiderate action—but he thought the provision would be salutary—and that all would hereafter rejoice in having been instrumental in effecting it.

[G]Mr. Field said this proposition came from so noble a source that it seemed ungracious to oppose it. Yet he could not feel in favor of it now. He was forcibly struck with the remark of the gentleman from Middlesex that it will be time to consider this proposition when this

convention shall have made it obligatory on the legislature to provide for the education of all the people. He hoped, indeed, that such an obligation would be laid upon the legislature and if no other one should propose it, he would, before the convention rose, introduce an article for that purpose. He wished to see education consecrated by being engrafted in our fundamental law, as is the case in many sister states.

But this proposition was not adapted to attain the object of the mover. A parent who would disregard so many other motives to educate his children, would be wholly uninfluenced by this provision.

Again I would not visit the punishment on the head of the unfortunate person; but on the majority of the people who can read, but who have not taken care that he should be taught. I would say to them, every man votes—will you not, therefore, for the common welfare, educate him that he may vote intelligently. The elective franchise, sir, is like the eye, you cannot touch it even to correct disorder, without danger of injuring the organ itself, so delicate is it.

On motion of Mr. Clark the further consideration of the subject was postponed.

Mr. Parker offered to amend by adding that the legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of bribery at elections. [A]It is so plain that it requires nothing to be said in its favor. The evil to be remedied is a great one, and should be punished by a total deprivation of the right to exercise the elective franchise—because if the unprincipled can control others and make them vote against the dictates of their minds and consciences, there is no reason why they should be allowed to inflict that injury upon the country again.

Mr. Naar suggested that it should include those who are bribed as well as those who bribe.

Mr. Parker had intended to embrace both and thought they were.

Amendment agreed to, [G]23 to 8.

[A]The second article—on the Qualification of Persons To Be Elected—was taken up and read.

Mr. Condit moved to strike out the age of 25 required for Council or the Senate, and insert 30.—He should prefer, too, that the age required for the House of Assembly should be 25 instead of 21.—He thought that however intelligent a person be, at that age, there is a want of practical experience, which disqualifies him for the duties of a Legislator, but he would leave that open for the present. He moved to insert 30 (for Council) instead of 25.

Mr. Browning. I would suggest to the committee, Mr. Chairman,

that this age is fixed upon by the constitution of New Hampshire for a seat in their Senate, and also by the constitution of the U. States for a seat in the National Senate. It is more necessary here, because it is probable that the members of Council may be the Judges of the court of the last resort in this State; and if so, it is desirable that they shall be of an age at which their judgment shall be mature. It may be policy to send younger men to the other branch of the Legislature, and that, I understand, is the custom in the Southern States. It is from these views that I think the amendment proposed by the venerable member from Essex is proper, and shall give it my assent.

Amendment agreed to, [G]19 to 16.

[A]Mr. Parker offered an amendment to require that members of Council shall be freeholders. We are called here to amend the constitution of New Jersey. That is the idea which I have, although by the words of the law, we are to frame a new constitution. This amendment is the same principle as is required by the constitution under which we live and have lived since its adoption. That requires a freehold qualification for both branches of the Legislature. It was made by landholders and it was intended that the legislature should be influenced by that portion of the population who have the greatest interest in the welfare of the State. It has so remained from that time to this, though 60 years have elapsed.

[G]He wished to hold fast to that feature in one branch at least, so that if anything injurious to the landed interest should be attempted in the lower House, the council might have some check upon them. Our laws were made in a great measure to affect property, and he questioned whether the whole landed interest should be left to hold their tenures subject to the legislation of those who have no interest in the land. It was in accordance with the spirit of our institutions to establish some protection for those who till the land. [A]The constitution of New York, made within 20 years, contains this provision—which was adopted after much consultation and debate, [G]and yet in that community the trading and manufacturing classes are more numerous than in New Jersey, where the farmers are a large majority. [A]My proposition gives up the qualification in one house, but retains it in the other, and does not specify what the value must be.

Mr. Naar. I am sorry to disagree with the gentleman from Middlesex, but I for one cannot silently consent that a qualification shall be engrafted on the Constitution which has no connection with the tenure of the office—or with any principle of right or wrong. The power which the member of Council exercises comes rather from the people

who elect him than from himself. I cannot imagine how the possession of a freehold can add to the talent, virtue or patriotism of any one. How easy it is to obviate and get over the difficulty. For five or six dollars, a man may purchase a tract of salt meadow and then he is a freeholder, and what better is he than before? I know it is required by our present Constitution—but how long is it, since it has been regarded? Was ever a question made about it?—Never, never: at least in my recollection.

So far as I know, a great majority of those who sent me here, are opposed to any such qualification—and that is the prevailing sentiment in my section of the State. I am opposed to the amendment for these reasons: because it cannot add any talent, virtue or patriotism or any other qualification under heaven.

[G]Mr. Parker did not know whether this qualification gave a man more understanding. Neither did he know that it did not; but the absence of it does not give him a better right of judging. [A]There are two distinct interests or classes in the state: [G]and cases may occur, in the laying of taxes, [A]as for example, an invasion, [G]when it will be necessary for the protection of the farmers, that they should have control of one branch, so that all the taxes may not be laid on the land. [A]The amendment is in the spirit of the Constitution and laws of free men. [G]Jurors, judges of election, chosen freeholders, assessors and commissioners of appeal, must be freeholders; and it is not because they have more power of judging, but because they are more independent, [A]and have more interest.

Mr. Browning. No one will contend, that the possession of a few acres will make a man intelligent, patriotic or virtuous, but, I submit whether it will not *strengthen* their patriotism, in regard to the interest of the State? whether a real interest in the Soil, will not add an interest in the affairs of the State. Why, it is a proverb that a chicken will fight best on his own dunghill; & I infer from this, that every man who has a freehold of his own, will fight best for his own interest and it will *strengthen* his desire for the interest of the State: our present Constitution and laws too recognize this principle, from which we should not depart without good reason.

Mr. Hornblower. Mr. Chairman, I appreciate the motives of the mover of this amendment and of the gentlemen who have sustained it. They consider it to be conservative and based upon principle, accompanied by the experience of past time. I know that they do not wish to narrow the rights of the citizens of N. Jersey or make odious and unpleasant distinctions between them. [G]Mr. Hornblower had not the

least suspicion that the movers of this amendment had any lingering attachment to aristocracy. He had no reason to doubt their pure republican principles. This was a question entirely of expediency. No doubt, 50 years ago I would myself have been in favor of such a qualification. But we are framing a constitution not for the past, but for the future—for a government of freemen exercising the rights now considered the rights of freemen. It was not necessary for us to meet and combat views that public sentiment will not sustain.

[A]It was well observed a few days since by an intelligent member of this Convention that the security for our rights and privileges does not depend upon the phraseology and carefully defined principles of a written Constitution. We can no more carry out the Constitution or the civil enactments of the Legislature where public sentiment does not meet and sustain them, than we can remove mountains by faith. If the Constitution which we shall form shall be unfavorable for the liberties of the people we can not help it—if favorable we should be thankful; age, experience and process of time must determine.

This property qualification, is one which has been practically repudiated long since in N. Jersey.—Now, no man can be elected to Council not worth £1000 Proclamation money—nor to the Assembly unless worth £500: and when, as has been asked, has inquiry been made as to the qualification of the candidate in this respect? I remember many years since—some 30 or 40—a member was sent from Sussex, in times of high party excitement, and when he presented himself to be sworn, it was objected that he was not a freeholder in Sussex Co. and it was then ruled by the Legislature—or by the majority, that they could go into no enquiry as to that fact—that he had been elected by the people with the Constitution before them, which was evidence that he had the necessary qualification. I have known members to be elected from Essex Co. who were not freeholders, or if they were, were made so in bad faith and in order to meet the objection. How easy is it to become a freeholder—by the purchase of an acre of salt meadow, or even of a burying place in a cemetery! How many sons are there enlightened, educated, virtuous and patriotic, who are not freeholders, who are looking forward to the time, when an inheritance shall be cast upon them and make them wealthy and substantial citizens. They will be shut out if you adopt this principle, unless their fathers convey them the color of a freehold. I had rather trust to the virtue and intelligence of the people. Leave candidates to be selected for their other qualifications and their fitness. How many freeholds are incumbered for more than they are worth?

whose owners never expect to redeem them—but are mere tenants at will to mortgages? I repeat that I do not think at this day any good can result from the amendment, and that it is not expedient to adopt it, and it will furnish a theme for the opponents of the Constitution who may *choose* to make it a hobby on which to ride into popular favor.

Mr. Parker. I confess, Mr. Chairman, I have heard arguments if they may be so called, from the gentleman from Essex which I had not expected from that quarter—arguments not founded upon principle, but upon expediency. I do not go for that. If I was bound by such an oath as that, I should quit my seat. I came from freemen. My ancestors have always been tenants of the soil: have had property to stand upon and courage to defend it. I came here to do right—and whether sustained by my constituents or not, I hope they will, as that gentleman has done, give me credit for my motives, if not for my opinions. I came here upon no question of expediency. I have always discarded that, here, at the polls, and elsewhere—and I stand yet where I always did. [G]I yield not to the wind of popular influence: If I can't come to anchor, I'll buffet the storm. The gentleman says the times have altered, and he is a strong example of it. He has abandoned his ground and drifts forward and backward with the tide.

[A]Mr. Hornblower. We always have a right to define our own words. I used *expediency,* in the sense of *sound discretion*—and not in its popular meaning.

[G]Mr. Condit advocated the amendment as making the Senate more stable and select.

Mr. Schenck contended that property was one of the constituent parts of our State sovereignty. It is made up of population and territory. Those citizens of a state who have an interest in its territory attach themselves more closely to its sovereignty. A man may come here with only personal property, perhaps because our taxes are light; and an exigency requires us to augment taxation and he removes. On this ground he is not entitled to all the privileges of him who is bound to the soil. It is true, those who are not freeholders have as much intelligence and virtue as those who are. They have often too, a large amount of sentimental patriotism that will not stand the test. But the land holder must stand by his fireside and defend it; and the community when they can find no other property must come to his land, for the support of government.

At this moment there is no small sensibility, caused by the conflicting interests brought in by immigration. Such persons do not often become interested in the soil and hence the freehold continues in the

native born. And is he not entitled to a special guaranty? I think he is.

Mr. Jaques said distinctions in society are always odious. If we adopt this amendment, the constitution will not be ratified. The Declaration of Independence says all men are born free and equal. This convention can not confer special privileges. England adopts this principle; landholders control one branch of her legislature and her people are oppressed, & reduced to slavery and beggary. With us the land is getting into the hands of a few, and in a few years the people may be reduced to the same beggary as in England. You have no right—the people have no right to take the ground assumed in this amendment. I know this idea will excite alarm. Many persons set up the doctrine that we can do what we please; but we can not violate the moral rule of right. I know we have the might to do it; but if we do it, we do wrong.

Mr. Field said when the eccentric John Randolph first presented himself in the House of Representatives as a member elect, the Speaker asked him are you 21 years of age? Go, said he, and ask my constituents! I am afraid if we adopt this amendment, and a member of Council elect is challenged as not being a freeholder, he will answer, Go and ask my constituents. If the rights of freeholders are to be guarded, this is not the right way. You should provide, as in Massachusetts, that none but freeholders, shall vote for members of the upper branch of the legislature. Suppose the freeholders desire to be represented by one not a freeholder; they are prevented by this amendment. Suppose the majority meditate a blow at freeholders, could they not easily elect their man, having first made him the owner of an acre of salt marsh, at an expense of a few dollars. This provision is found in no other state constitution; it is not in the Federal Constitution. And are not the President, the Senators and the members of the House of Representatives, officers of much higher influence than the members of our Council. The majority of the voters in this state are freeholders, and when there shall be a necessity for it, can they not take care of themselves? The majority should have the privilege of electing whom they choose—one who is a freeholder or not.

After some further remarks by Messrs. Hornblower, Condit and Browning, the amendment was disagreed to, 13 to 18.

[A]Mr. Elmer offered an amendment to require a person to have been "a citizen of the United States for 10 years" before he can be elected to Council. He thought it right that they should have resided here long enough to understand the nature of our institutions and laws, and what could suit the wishes and wants of the people.

Mr. Ogden hoped the amendment would not prevail, and the principle had already been decided—*Not agreed to.*

Mr. Condit moved to strike out 21 as the age at which members of Assembly might be elected and insert 25. He thought there must be a want of experience at that age which would unfit persons for the duties of legislation.

Mr. Randolph said he had voted for the gentleman's amendment to require the age of 30 for a member of Council. The number of that body is smaller and he thought it right and reasonable that they should be more advanced in years: but he did not think it necessary in the popular branch. He recollected in reading the life of Wilberforce, who was a good judge in such matters, that he remarked that a person rarely succeeded well in public life unless he came into Parliament before the age of 25. And I believe it is a fact—that all the great men who have figured in the English Parliament have been elected there at the age of 21 or soon after. By the Constitution of the U. S. a person may be elected to the House of Representatives at 25, and it would not be proper to disqualify a person from acquiring experience as a member of the Legislature, before entering that body. And I am well satisfied from personal experience that those who have acted in the Legislature before being elected there, have an advantage over others; and do more honor to their State and themselves. It is the practice in the Western and Southern States for young men to enter early into public life—and if they are to figure as politicians or statesmen, are first sent to the popular branch of the Legislature, and if they there show a practical knowledge of business, it is a stepping stone, & they are soon removed to a higher station. The Committee are well aware too that many persons at 21 are older in mind and better f. ed for the duties of statesmen, than others become in all their lives.

Amendment not agreed to.

Mr. Hornblower moved to strike out "Legislative Council" and insert "Senate".

After some conversation as to whether this was the proper time to make the amendment.

Mr. Allen moved to postpone it. He thought to retain the old names of Council and Assembly would of itself be a recommendation of our Constitution.

Not agreed to.

Mr. Vroom having stated that the Committee on the Legislative Department had agreed to recommend the names of "Senate" and "General Assembly," the

Amendment was agreed to.

The third section of the "TIME OF ELECTION," &c. was read as follows:

3d., on the "Time of Election, and the Meeting of the Legislature."

The Members of the Legislative Council and General Assembly shall be elected yearly and every year forever, on the second Tuesday of October; and shall meet separately on the second Tuesday in January next after the said day of election.

Mr. Child moved to strike out the second Tuesday of October and insert the second do. of Nov.

Mr. Hornblower suggested it had better be left so that the Legislature might fix it on the same day as the Electorial Election.

Mr. J. R. Thomson said the Committee had thought it very desirable that the State and Electorial Election should not come on the same day: particularly as the latter comes but once in four years; and we have provided too that the election shall occupy one day. Before the question was disposed of, Mr. Parker moved the Committee rise.

Mr. Pickel hoped some gentleman at the proper time would move to have the Legislature sit but once in two years. That is the case in some of the other states and he thought it would meet the wishes of the people of New Jersey.

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

The convention adjourned till to-morrow morning, at ten o'clock.

TUESDAY MORNING, 28th May.

At ten o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Young.

Mr. Vroom, from the Committee on the Legislative Department, made the following report:

The committee to whom was referred the following resolution:

"*Resolved*, That so much of the constitution, to be formed by this convention, as relates to the legislative department, be referred to a committee to report thereon," beg leave to report as follows:

The Legislative Department

I. The legislative department of this state shall be vested in a Senate and General Assembly.

II. The Senate shall be composed of one senator from each county in the state, elected by the legal voters of the counties, respectively, for three years: and each senator shall have one vote.

III. As soon as the Senate shall meet after the first election to be held in pursuance of this constitution, they shall be divided, as equally as may be, into three classes. The seats of the senators 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 elected every year: and if vacancies happen, by resignation or otherwise, the persons elected to supply such vacancies shall be elected for the unexpired terms only.

IV. The members of the General Assembly shall be annually elected by the legal voters of the counties, respectively, and shall be apportioned among the said counties according to the number of their inhabitants. The present apportionment to continue until the next census of the United States shall have been taken, when the same may be changed by the legislature, and shall then remain unaltered until another census shall have been taken; *provided*, that each county shall at all times be entitled to one member.

V. Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the legislature, the writs may be issued by the governor, under such regulations as may be prescribed by law.

VI. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

VII. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, may expel a member.

VIII. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

IX. Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

X. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto.

XI. The senators and members of the General Assembly shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the state; which compensation shall not exceed the sum of three dollars per day for the period of forty days from the commencement of the session, and shall not exceed the sum of one dollar and fifty cents per day for the remainder of the said session. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, on the most usual route. The president of the Senate and the speaker of the House of Assembly shall, in virtue of their offices, receive an additional compensation, equal to one-third of their per diem allowance as members.

XII. The senators and members of the General Assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any speech or debate, in either house, they shall not be questioned in any other place.

XIII. No member of the Senate or General Assembly shall, during the time for which he was elected, be appointed to any civil office under the authority of this state which shall have been created, or the emoluments whereof shall have been increased, during such time.

XIV. If any member of the Senate or General Assembly shall be elected to represent this state in the Senate or House of Representatives of the United States, and shall accept thereof, or shall accept of any office or appointment under the government of the United States, his seat in the legislature of this state shall thereby be vacated.

XV. That the legislative department may, as much as possible, be preserved from all suspicion of corruption, none of the judges of the supreme court, or of any other court, sheriffs, nor any person or persons possessed of any office of profit under the government of this state, or of the United States, shall be entitled to a seat, either in the Senate or in the General Assembly; but that on being elected, and tak-

ing his seat, his office shall be considered vacant.

XVI. All bills for raising revenue shall originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills.

XVII. No money shall be drawn from the treasury, but for appropriations made by law.

XVIII. The credit of the state shall not be directly or indirectly loaned in any case.

XIX. The legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the state, which shall singly, or in the aggregate, at any time exceed one hundred thousand dollars, except for purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall impose and provide for a direct annual tax sufficient, with such other appropriations as may be made therein, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof; and no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for or against it at such election; and all money to be raised by the authority of such law shall be applied, only, to the specific object stated in such law, and to the payment of the debt thereby created.

XX. The assent of two-thirds of the members elected to each house shall be requisite to the passage of every law appropriating public money or property to local or private use, and also to the passage of every law granting prerogative rights or special privileges, or for creating, continuing, or renewing private corporations, other than those for religious, literary, or charitable purposes: and all such laws may be altered, modified, or repealed by the legislature, whenever, in their opinion, the public good may require it.

XXI. All charters for banks or money corporations shall be limited to the term of twenty years, but may be renewed.

XXII. No county or township shall be created, nor shall the boundaries of any county or township be altered, without the assent of two-thirds of the whole number of members elected to each house to a law for that purpose, and without three months' public notice having been given of the time of applying for such law.

XXIII. No divorce shall be granted by the legislature.

XXIV. No lottery shall be authorized by this state, and the legislature shall pass laws to prevent the sale of all lottery tickets, except in lotteries which may now be authorized by a law of this state.

XXV. The legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts.

XXVI. To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

XXVII. The laws of this state shall begin in the following style: "Be it enacted by the Senate and General Assembly of this state, and it is hereby enacted by the authority of the same."

XXVIII. The fund for the support of free schools, and all the proceeds thereof, dividends, stocks, and other property, now or hereafter to be appropriated for that purpose, shall remain a perpetual fund, without diminution of the principal by the legislature, and shall be sacredly devoted to the encouragement and support of common schools, for the equal benefit of all the people of the state, in the mode prescribed, or hereafter to be prescribed, by the legislature, and to no other use or purpose whatever.

XXIX. The General Assembly shall have the sole power of impeaching all civil officers of the state for corrupt conduct in office or for crimes and misdemeanors; but a majority of all the members elected shall be necessary to direct an impeachment.

XXX. The Senate shall have the sole power to try all impeachments, and, when sitting for that purpose, they shall be on oath or affirmation; 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 to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under this state; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Signed, by the committee,
28th May, 1844.

P. D. VROOM,
W. B. EWING,
PETER I. CLARK,
T. G. HAIGHT,
ROBT. GILCHRIST,
FRANCIS CHILD.

I concur in this report, with the exception of the clause relating to county and township lines.

CHARLES C. STRATTON.

Which was read, laid on the table, and three hundred copies ordered to be printed.

The convention then resolved itself into committee of the whole, Mr. Stites in the chair, upon the consideration of the unfinished business of yesterday, being the report of the committee on the Right of Suffrage; providing for the time of holding the elections and meeting of the Legislature, the motion before the house from yesterday being to strike out October and insert November.

Mr. [Parker]: [The Advertiser incorrectly credited this speech to Clark. In a statement on June 5, 1844, Clark announced his stand as opposed to that of Parker, who advocated that elections be held on two days, while Clark favored holding elections on one day.] I hope the gentleman will withdraw that amendment, or consent to postpone it for the present, as I have a proposition to submit on this subject, which is one tending to effect a radical change. The amendment being withdrawn, Mr. [Parker] then moved to insert after the word October the words "and the succeeding day, as provided." My object, he said, in proposing this amendment, is that our elections may be conducted as now provided for on two days. If the provision as now before the House is adopted, it will confine the election to one day, and will have the effect of totally deranging the arrangements for the election which have been made in different parts of the state. This will have the effect of breaking up the arrangements now made, and of defeating, in a measure the ends of the election, because, by holding the election on one day only it would attract a large crowd, and cause much inconvenience. If this amendment is agreed to, I shall offer another, which is that the time of holding the elections may be hereafter altered and established by law. I think the adoption of the first amendment, with an additional provision, similar to those which I propose to offer, will obviate the difficulty by leaving it to legislative action to fix upon one day only for holding the election, if it should meet with the consent of the majority of the electors, and public sentiment, which would be brought by the representatives into the legislature, would determine the propriety of the measure. The propriety of holding the State and Presidential elections upon the same day is questioned, and it would be the better plan to leave to the legislature to fix upon one day for having the election if they saw fit, or to fix upon the same day as that

appointed for the election of the Presidential electors. We must leave the provisions for this change for future times to be settled on.

Mr. Hornblower. I hope, Sir, this amendment will not prevail. This is one of the things most desired, and most anxiously looked for by the people of New Jersey, on the subject of Constitutional amendments, and that is to break up the existing enactments for holding elections upon two days. All classes have looked forward to the time when this provision would be altered, and when the election should be held on one day. There would no difficulty result from the change. In large townships they could be divided into Electoral districts, and the Election conducted with greater peace and security than by having them all at one poll. In very large townships the elections might be held at two or three polls on the same day. If any amendment is adopted, it should be a radical one, and I should prefer that the election should be held on the Tuesday after the first Monday in November, with power in the Legislature to change the same to any day which may be fixed on by Congress for the election of Presidential electors throughout the states, and to have but one general election in the same year in which members of Congress are elected. By adopting this method we shall get rid of the expense, the agitation, and the difficulty of having the elections so near together. As to the difficulty of changing the time from October, that ought not to have any influence, as it is manifest that the Legislature, if this Constitution shall have been adopted, will have to convene and pass laws to carry the provisions of the Constitution into effect. There must be previous legislative action before the Constitution can go into effect. If the report of the Committee on the Executive is adopted, as I have no doubt it will be, the votes for Governor at the next election are to be returned to the Secretary of State, and after being opened in the presence of both Houses, are to be canvassed; and that report provides the mode in which it shall be performed. We must either create a Board of Canvassers to canvass the votes, before the legislature meets, or they must meet to make provisions for it; and we cannot have a meeting of the legislature before the adoption of the Constitution. I hope the amendment will not be adopted.

Mr. Naar. It is due to the citizens of Middlesex [Essex], whom I represent in part, and to myself to state that if this amendment [to hold elections on one day] prevails, it will cause great difficulty. In two of our towns, Westfield and Rahway, they have made arrangements to hold the election for two days at two places. The amendment of the gentleman, if followed by the other one which he proposed to

submit, is very proper, viz: to leave the future to legislative action, and the change, if any should be made, would come better from them than from us, as the members of the legislature will have been able to ascertain public sentiment on this point, and will come instructed how to vote. I shall support the amendment [to hold elections on two days].

Mr. Randolph. I regret to differ with the gentleman when he says, that it is not necessary or desirable. The expense of holding the election two days is something worth consideration. The whole election costs about 5,000 dollars, and to take off the expense of one day is certainly desirable. Besides he must take into consideration the expenses of the people, their loss of time by holding the election for two days when it may as well be held in one. This is one reason, perhaps, not a very strong one. But there is another reason, which is worthy of consideration. By holding the election for one day only, we have a guarantee for the security of the ballot box. For myself, I have no fears on this score, yet it cannot be denied that the people of both parties are jealous of the advantage which either may desire by having possession of the ballot boxes, as it furnishes the opportunity, if they were so disposed, of making alterations in the tickets. I have myself, and I doubt not others have heard such accusations urged. I do not suppose there exists any real cause for apprehension, yet the people think otherwise, and by holding the election on one day we shall obviate all these difficulties, for the votes can all be counted, and the result made known on the same night.

As to the objections advanced by the gentleman from Essex, I think they may be obviated. They had also struck me. I allude to the difficulties in large townships, but this can be obviated by the insertion of a single line in this Constitution. In this particular, we have a precedent in the act under which we are assembled here (Mr. Randolph read the act). This meets the objection raised. A simple provision may be inserted that the general election shall be held at the same places where the last township elections were held. In large townships the people all assemble on one day at their town meetings, and transact in one day all their business, and they can do it much better, and more satisfactorily than they could by meeting 2 days. By having the election held only on one day, there would be no opportunity for bargaining, and changing, and interference, and the whole may be transacted with less expense to the state, and with greater comfort and convenience to the citizens.

Mr. Wurts. When the committee who have reported this section concluded their labors, they supposed that this would be in conformity

to the wishes of the people throughout the state. At least such is my impression derived from long experience and observation, that holding the election for two days is considered unnecessary and uncalled for, and increasing the expenses of the state. By doing away with the two days, we save much time, and we also do away with much of the dissipation which is always attendant on elections. As to the objections against changing the time from October that has been retained because the people are accustomed to it. It is true the election has been held on that day since this has been a state. This was discussed in committee, and a majority were disposed to keep the election of state officers, and that for officers of the general government separate and distinct. The Presidential election absorbs all other considerations, and we lose sight of those local interests which more immediately concern us, and the committee were disposed to let them remain as they now are, separate. The objections to having the election two days are many, and in my opinion insuperable. As to the objections of the gentleman from Essex, I do not consider them supported at all. It may be that the same townships have provided for having two days, but this is provided for also—for the election is to be held in October as before, and it will soon become known, if we shall fix on one day. The people will assemble on that day, and the election can be finished. It supersedes the necessity of meeting elsewhere to vote; and whether some of the towns have or have not selected their places, they will meet at some place in the township, and this would be the time and place fixed on by the Constitution. I am in favor of having only one day for the election, but I am not so particular as to the change from October to November, as the people are now accustomed to hold their election in October. But the question now is, shall we have the election for one or two days. I must say that my opinion is for one day. The argument that the townships have provided for two days has no force in it, as they meet on the Tuesday in October now provided for.

Mr. Child. If we adopt this amendment, it will subject the people of some of the townships to inconvenience. It is true that here in this city, our election for town officers lasts but one day, but there they had fixed on a place for holding them, and that was where prior town meetings had been held. How many large townships are there where it is the practice to hold the election at two places in one day, and at another on the next, to suit the convenience of the people. The Inspectors have been appointed, and the places have been determined on, and unless some provision is made, it will be necessary to convene town meetings in most of the towns. Let the election which is to take place

in Jan. 1845, be for two days as heretofore, but after that, if it is deemed advisable, confine it to one day, and this will give the towns an opportunity of making arrangements. I believe the people are in favor of holding the election for one day only.

Mr. Hornblower. I have an amendment which I desire to submit, and which may meet the objections raised, viz: that the first, or next election, shall be held in the manner and form now provided for, but that all subsequent elections shall be held, &c. (as before offered). I offer this as an amendment to that offered by the gentleman from Middlesex [Parker].

Mr. Wood. That will require the alteration of the whole section.

Mr. Randolph thought they were distinct and separate propositions. The Chair coincided in this view, and the amendment was not pressed.

Mr. Parker. I do not know as it is necessary to say any more on this subject. I trust the members will understand the subject as I do. My object is to provide a mode by which the people may express their opinion at the next election—to fix the mode of holding elections in the way provided by law. I am surprised to hear gentlemen assert, that it is in opposition to the will of the people to continue the election for two days. But it is but an assertion which I might meet with my own to the contrary, and could appeal to the fact, that the people have thus far acquiesced in it without any remonstrance or complaint that I have heard or noticed. I have lived for 50 years in Middlesex and I have voted there upwards of 40 years, and I have no recollection of seeing or hearing of any petition to change the time of holding the election from two to one day. We have some townships which poll a great number of votes. In two of our towns we poll 900 votes, and if you compel them to deposit these in one day, it will draw a great crowd together, and should the day prove stormy, it will make matters worse. The quiet and peaceable portion of our citizens are opposed to going in these crowds at elections, and by having it on two days this may be avoided, as the crowd will always be greater on one day than on the other. Thus they may have their choice of time, and I know there are many who would rather forego the privilege of voting, than to go and be pushed about in a crowd. There is, too, one denomination [probably Quakers] of our fellow citizens who are especially annoyed by a crowd, and the invalid too. Both would be accommodated, and if one day was stormy, the next might be clear. Let this first election be conducted at the time and places now provided for by law—that is all I ask. I deny that the people are in favor of the change, and challenge

the proof. I wish to see as little alteration as possible from the principles and provisions of the old Constitution and the existing state of things—There are undoubtedly evils; but in attempting to cure them you may go too far. The change may be made too great, and you may excite a prejudice against the Constitution. I want no radical change. I want reasonable amendments. I want what is right and proper. I do not want to tear up root and branch the venerable Constitution under which we have so long acted. I want to see the people to go on in the good old quiet way.

Mr. Browning. Is the question upon having the election one day or not?

Mr. Condit. The amendment does not refer to the next election. If it is the intention of the gentleman to have it for two days at the next election, and to confine it to one day after that, it would be better to express it. Public sentiment, I think, is in favor of having the election one day only. It is so where I reside. They wish to have as few elections as possible, and to confine them to one day each. If this is to be fixed on as a permanent rule, I think it is desirable.

Mr. Parker. My object is to have the election on the second Tuesday in October and the succeeding day until altered by the Legislature, but the provision which I shall submit in case the first amendment is adopted, will give the Legislature power to change the time and number of days. The days now provided for have been established for 50 years.

Mr. Ewing. I unite with Mr. Parker in the sentiments of veneration he has expressed for the old Constitution, and I desire that this object should be regulated by this Constitution. It is regulated by the former and should be by this one. He seems to doubt that the people desire the change to one day and is mistaken in saying that the matter was never before the Legislature. In 1819 and '20, this subject was brought before the Legislature once, if not more, but in consequence of some of the large counties making a difficulty no alteration was made. In the county which I have the honor to represent, the sense of the people is in favor of confining the election to 1 day. The people would readily accommodate themselves to the change and I think are almost unanimous in desiring it.

The night of the first day of elections is always a scene of much evil. Persons take advantage of that night to make their calculations as to the prospects of their party, and what influence they can bring to bear to effect a change for their own benefit. Then there are those who indulge to excess in intemperance, and scenes are presented on these

occasions demoralizing to society, and injurious to the rising generation. The people almost unanimously agree to it. In Philadelphia, where the elections are always productive of great excitement, they get through with them in one day. The gentleman speaks, too, of a class of our citizens who do not like to be jostled about in crowds. They are a large and highly respectable class, not fond of strife and noise, and this amendment should be satisfactory to them, as they with all other right minded persons must lament the excess consequent upon holding the election for two days, we shall be gainers in expense and in morals by the change, and I think it will meet the unanimous approbation of the people of New Jersey.

Mr. Hornblower. So far as the amendment goes to operate on the next election I go for it, but I hope we shall not leave it to the Legislature to fix the days and times of holding future elections. It seems to me that the argument of the mover is not satisfactory. He wants the two days continued, until the Legislature operated on perhaps by some electioneering project, see fit to alter it to suit the views of the majority. He argues that the people are now accustomed to the two days: There is no force in that, for I may ask because the Legislature have been granting divorces at the rate of two or three doz. in a year, is it any reason they should continue to do so. He says the law does not compel a man to attend the polls for two days. Neither do the laws compel a man to attend a horse race, and yet we know these places will always be attended. In Newark our charter election is held for one day only and that is generally one of an exciting character, and we get on very well with that, but for the State election we are under State laws and must hold the polls for two days, and what is the consequence? I wish the gentleman would come on there in October and see for himself. I hope the members will not vote on this amendment in contemplation of the other one he has submitted.

Mr. Clark. I agree that this question cannot be settled but by the Constitution. I would not leave it to fluctuating Legislation. Public convenience and the preservation of the morals of the people requires the change. The people love excitement, but they don't like to have it continue too long. I come from a county whose population is principally agricultural, and if any class of the community, would suffer inconvenience, it would be those, and yet I agree in thinking that it is the unanimous wish of the people of Hunterdon to have the change made to one day—I have no doubt the mass of the people expect us to settle this question in the Constitution. I cannot see the difficulties which have been raised with reference to large counties. It is easy

enough to divide the large townships into electoral districts. I am in favor of the amendment.

Mr. Vanarsdale. Cannot the question be divided?

Mr. Green. I desire in every vote which I may give in this Convention to give it on a distinct proposition. I feel the importance of avoiding the difficulty which may arise by having the election in October, but I am decidedly in favor of having it only for one day, & the difficulty now is as to the first amendment. Our experience here, and I speak, I think, the sentiments of all, shows that we should fix on one day. Our city elections, our town elections are held on one day and I think the feeling is, that more quiet would be preserved and less disturbance created at the polls, and that the difficulty which the gentleman from Middlesex is anxious to avoid, could best be reached and obviated by having the election held on only one day. The whole vote of the towns is often given on one day without inconvenience, and in counties where the masses reside they are in favor of that change.

There may arise a difficulty as to changing it for the next fall election, but that may be avoided too.—When we have settled upon the Constitution as we intend to present it to the people, there should be at the close of it a general schedule, to cover all these necessary provisions. While we are here framing a fundamental Constitution to stand I hope for many years, it is important that we should confine ourselves to fundamental principles, and not mingle with these matters of secondary consideration. If it is the intention of the Convention to do as they please, why have a constitutional provision? Why say a word about it? It does not come within the scope of our ideas of constitutional provisions. Why say that the next fall election, shall be held for two days and not thereafter? If we do not deny the Legislature the power to regulate this we admit that they have it.—If we intend to have the question open do not say a word about it. If not, let the Constitution be so framed as to settle it. If temporary embarrassments are to arise, they can be provided for by the schedule at the close of the Constitution, but don't mingle with it a provision which is to go into effect in six months. Let us settle the question whether the election shall be held for one or two days, and if any difficulty should arise as to the fall election, we can provide for that in the schedule.

Mr. Hornblower offered as an amendment, that the first election for Senators and Assemblymen under this Constitution, should be held as now provided for by law, but all subsequent elections thereafter, on the second Tuesday of October.

Mr. Green. I ask again, had we not better dispose of the great principle, without reference to these temporary embarrassments? I don't see why we cannot cover all these provisions, if necessary, in a schedule.

Mr. Hornblower. I withdraw the amendment, as I concur entirely in your views. The question was then put on having two days of election and lost.

Mr. Randolph moved to strike out the word "every" before year in the 2d line, and insert, "each alternate year." I wish in offering this amendment, he said, to raise the question whether the election shall be annual or biennial. I have no particular remarks to offer in support of it. It has been discussed privately, and there are one or two reasons which have struck me why it should be biennially. In the first place, the same reasons operate as on the question as to holding the election only one day. We would lessen the expense of the State some $5000, perhaps more. In connection with this, is the question of a biennial session; but I do not propose to raise that now. The first reason I would advance, is, that it would reduce the expense, and there would be less loss of time to the people. It would also tend to less inconvenience, and to a less injurious effect on the morals of the people from the constant recurrence of the elections. If the reason has weight on that question, it has the same weight here. But it will be said that they have always been elected annually, and that should continue to be done. In anticipation of that I would remark, that we have met to form a Constitution—to eradicate such parts from the old one as we cannot improve. Besides, it does not follow because we have always elected them annually, that we should continue to do so now. The same argument we may have seen in the old story book, where we read of the boy, who carried a stone in one end of his bag and wheat in the other, because his father had done so before him. My colleague says that is not a true story, but nevertheless it is applicable. When all other arguments fail, the gentlemen say oh, it is a part of the old Constitution. In past years the question of annual elections has been one of importance. It was a question on which parties were divided, but the situation of the country then and now was very different. But the reasons which operated then, I apprehend, will not operate here. Here there is a people governed by their own right, and not by subjects of a foreign power, or by grant from the crown, and the simple question is, which would most conduce to the general welfare to have the election annual or biennial? I think myself biennial is preferable. I do not know any other reasons which suggest themselves. I have thrown these

out for the consideration of the Convention. It is a matter of importance, and as far as my opinion goes, meets with general approbation. We have, indeed, a biennial election now. If a ticket is taken up and succeeds, unless some strong reason should operate against it, it is almost always taken up a second time.

Mr. Pickel was in favor of delaying consideration on this question, until they had received the report of the committee on legislative action.

Mr. Naar. I think this is a subject which demands consideration on its own merits, without reference to any other question which may be brought up. Shall the people of New Jersey choose their representatives every year or every other year, is the question. The arguments which have been offered in favor of it, might as well have been used if the proposition had been to restrict it to 10 years. But should the interests of the people be guarded, and properly, by having the election biennial than by having it annual? I think it would be wiser and better to have it annual. The people would know the men whom they had sent there, and if they carried out their wishes, they could send them for the second year. But if they misconstrued or misrepresented their wishes, let the people have the power of keeping them at home. With this view I shall be in favor of the yearly representation. No argument has been advanced in favor of the biennial which would not answer for a decennial term. Yearly representation keeps the members in the power of their constituents, and the great danger to be apprehended is the failure of the representatives to carry out the wishes of the people.

Mr. Sickler. Does the gentleman intend to have biennial sessions, as well as biennial elections?

Mr. Randolph. I certainly am in favor of both, but I did not offer that, as some who were in favor of biennial elections would be in favor of having annual sessions. I offered it in this distinct way, in order to have a distinct vote on the question of biennial elections.

Mr. Ewing. The convention is not prepared I think to debate this now, and for myself I am not prepared. In the first place this subject has been discussed and considered by the people in the county where I reside, and our best informed citizens are of opinion that the interests of the public would be best subserved by having biennial elections and meetings. My first reason is that we should avoid the expense of a long tedious session of the Legislature generally about 4 months in the year, and which costs the State about $23,000 annually. Here is one important item.

I object to the multiplicity of laws—to the supplements and additional supplements, which are made from time to time. The great objection, that the people should understand the laws, and though it is necessary to have a multiplicity of laws, yet by having biennial sessions, the evils to which I have adverted, will be corrected. The experiment has been tried and with success in other States, (Mr. E. here referred to Delaware.) There they have public works, not, it is true owned by the State, but they are a fruitful source of revenue. The state is clear of debt and in prosperous circumstances, and the people are satisfied that the experiment is a happy one. It is too the opinion of our best and most influential writers that the people suffer from excess of legislation.—Eumenes, than whom we had no sounder writer, said in 1799, that the people of New Jersey had laws enough for 50 years. If such was the fact in the opinion of that man, what must now be the case, where we have had sittings and adjourned sittings for many years. On many subjects, a plain man cannot know anything of the laws, and I have seen even lawyers at a loss to understand what was the law applicable to the case before them. These are important matters. If the people of New Jersey could economize with respect to their Legislature and with safety to their own interests, the $23,000 annually saved would form a noble addition to our school fund, and would assist to educate hundreds of children now receiving no encouragement from New Jersey. But I know that the sentiments of the county I have the honor to represent, are almost to a man in favor of this proposition, and I am surprised to hear the assertion that in some parts of New Jersey it has not ever been discussed. Under all the circumstances and for the reasons I have urged, we should give this subject our candid and deliberate investigation.

Mr. Child. The only question now before the convention is to strike out the word every, and insert each alternate year. In this form the members are at a loss to determine the question on its merits. Those in favor of biennial elections are in favor of biennial sessions. All the advantage which would be derived by the people would be that it would save them some trouble, and perhaps, 5000 dollars. The disadvantages resulting would be that if the people should commit an error in choosing a representative who did not carry out their wishes, or if the people of the county should change their opinion upon any essential point, it would be in the power of the legislature to prevent them from choosing others. And I think it would interfere with the provisions we have adopted with reference to future amendments to the Constitution. If the sessions were biennial, would not the

proposed amendments have to be decided by the same body of men. I do not see how we can determine this matter on its merits, till we get at the legislative report.

Mr. Hornblower. I believe we are not prepared to act on this now. If we adopt the biennial election we must alter the time for the election of a governor, as he is to be elected for three years. There are several difficulties in the way besides, and I think it had better pass over.

Mr. Randolph said he had no objections to pass it over for the present, but he submitted as a substitute for the whole of the article now under consideration, an article embodying all the amendments he had suggested, which are ordered to be printed.

Mr. Naar. This appears to involve a question of prerogative. If we are assembled here under an act of the legislature, it could not have been the intention of the legislature to confer on us the power we are about to assume. (Mr. Naar here read the oath taken by the members of the legislature, and asked if in the face of this oath the Convention could adopt a provision of this kind, referring especially to the clause respecting annual elections.)

Mr. Clark. This is the proper time for the consideration of this subject. It is the report of the committee, to whom it was especially referred. If we settle this principle now, there will be no difficulty in so altering the legislature report, and to conform to its provisions. This question has been mooted by the members and talked of throughout the state, and I came here prepared to advocate biennial sessions and elections, and I would ask what interest in New Jersey would suffer for want of annual elections and sessions? A representative may prove unfaithful, and the majority may wish to punish him by turning him out, and if be we have biennial sessions, they would suffer no more than now. There is unhappily a fever for Legislation among us.—No man is chosen a representative who does not fancy that he can better our system of laws, and this is an evil which can be corrected by biennial sessions. I am satisfied that many a good law has been repealed because the people have not let it stand long enough to see how it operated. I should like to see no law touched for ten years from census to census. The conceits of men have been thrown into acts of legislation—have filled our courts with vexed questions of law, and tho' they may have proved a source of profit to the lawyers, they have proved injurious to the people. I can conceive of no injury arising to the finances of the state by adopting this plan. Let a competent committee be formed to receive the report of the financial condition of the state and publish it annually.

Mr. Stratton thought that the object was amply accomplished by the Legislative Report, which provides that Senators shall hold their offices, 1, 2 and 3 years.

Mr. Pickel thought the question had better not be disposed of definitely now, as the convention was not full, and it might come up again.

Mr. Wood was of the contrary opinion, and after some desultory remarks, the committee rose without having acted definitely on any of the amendments which had been offered.

The convention adjourned to this afternoon, at three o'clock.

At three o'clock the convention met, pursuant to adjournment.

The convention resolved itself into committee of the whole, Mr. Stites in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on the Right of Suffrage. The amendment to require biennial elections was resumed.

Mr. Child moved to postpone its further consideration for the present and take up some other report.

Mr. Wurts hoped it would not be postponed. It is important that we should act upon it now. The amendment necessarily includes the question of a biennial session of the Legislature. It is necessary that we should meet the question promptly. There is hardly any other subject before us which this does not involve. It affects the Legislative department—the appointing power—the election of Clerks and Sheriffs which are now annual. We can hardly take a step without seeing the necessity of having this fundamental and radical question settled. I do not object that members should have a reasonable time for reflection. I myself, perhaps, am hardly prepared to vote upon it. When I came here I was in favor of a biennial Legislature, but I am now inclined to think it is a subject of doubtful propriety, and many of the people have spoken in favor of it doubtless without much reflection. It is a general complaint that we have too much legislation, and I believe it is a fact that more time has been spent in legislation in N. Jersey for the last 15 or 20 years than in almost any other State. It is a well founded complaint—but the people have upon this ground, alone yielded in favor of a biennial session, without much reflection or consideration, and that too when disconnected from a biennial election. They have been always accustomed to have an annual election, and I think they will not be willing to yield it. The day of election is emphatically the people's day—they then exercise their highest attribute of sovereignty, and I do not believe they will yield it willingly. My impression is that I shall vote against the amendment, although my mind is not altogether convinced.

Mr. R. S. Kennedy advocated the postponement because he thought our vote now could not be final, as the house is not full.

Mr. Hornblower opposed the postponement and it was not agreed to.

Mr. Parsons. Before the question is taken on the amendment Mr. Chairman, I wish to state why I am opposed to a biennial election, and session of the Legislature. In the first place, our present Constitution contemplates and secures to the people an annual election, and it has enjoined upon each member an oath, not to alter that section which provides for an annual election, and I am not willing to run the risk of making this change without an expression of the will of the people. Are there Sir, any petitions for it before us? Have there been any demonstrations through the press that the people require it? If we make this change, will not the people say to us, "Why have you done it? Have we petitioned, or made any demonstrations for it?" If we make this change, will it not cause hundreds and thousands to vote against the Constitution? If I wanted, Mr. Chairman to defeat the Constitution, or to prevent its adoption, I would put this article in it. How easy will it be for a few who are opposed to it, to raise a hue and cry throughout the State and say they are afraid to trust the people to make their own laws, we will teach them differently, and defeat the Constitution they have framed! I should want nothing better than this, Sir, to defeat it.

But it is objected that in Delaware it works well. How does Delaware compare with N. Jersey? It has but about one-fifth of our population. It is mainly an agricultural State. The largest town hardly contains over 5 or 6,000 inhabitants: It has no commerce or manufactures.

How different is N. Jersey! Although we have a large agricultural interest, we have also a large commercial and manufacturing business, and these require frequent legislation.

In what other State is this principle adopted?—In Tennessee, Mississippi, and Arkansas, all except Tennessee with a less population than N. Jersey—Tennessee is an agricultural State and its largest town only contains some 5 or 6,000 people. Therefore no State has tried it, which should be a guide for N. Jersey. For these and many other reasons which might be urged I am opposed to the amendment.

It is safest to follow the beaten track, pointed out by our ancestors in 1776—who were so tenacious of it, as to require an oath of the members of the Legislature that it should not be changed.

Mr. Hornblower. This is a question upon which, I suppose every member has conversed more or less with his constituents; and all who have reflected or conversed upon it have come here prepossessed for one side or the other. I have no hesitation in saying, and candor requires it of me, that before I came here I was in favor of a biennial election and a biennial Legislature, unless a special session was called by the Executive power. Some of the reasons which have operated on my mind are—that it would be economical—would tend to prevent unnecessary legislation, and to quiet and compose the public mind and calm the ocean of political controversy, on the surface of which we have, for a long time, been constantly afloat.

But other considerations prompted our fathers to adopt a different and patriotic provision and which does honor to their heads and hearts. They were then a colony—subject to the government of England. They did not know that they were framing a Constitution for a free, sovereign and independent people—for posterity, who would have no monarchs of whom to ask favors, and no prerogative rights hanging over their heads. They were struggling against prerogative, and framed the Constitution as a temporary expedient for people circumstanced as they were: and they introduced this provision with the jealousy of freemen, as one on which their safety and liberty might depend. Sir, I honor them for their virtue, talent, intelligence, vigilance, patriotism, and for their resistance of arbitrary power.—Sir, I revere them for their principles, but the danger which they were guarding against has passed—and our bill of rights is now written on our hearts—it is in the hands of the people and not of the crown. This reason therefore does not now act, and if there was no other objection to the amendment, this alone would not cause me to vote against it.

But we are a small state in territory, with a comparatively large population. A greater variety of interests are embodied here than in Delaware—agricultural, mercantile and manufacturing: and we have reason to hope that they will increase and expand to a greater extent than we have yet witnessed. We must therefore frame a Constitution for a large and dense population—and one which shall last for years, and not to be altered at short intervals. Then let us look at it with reference to our political character as a State. Our Sheriffs, Inspectors of State Prison, Treasurer, and many other officers are now elected annually. Is it a prudent exercise of power to appoint them for a

longer period? Suppose our Treasurer should prove to be a defaulter in the recess: another cannot be appointed unless you rest the power on the Executive. So with the Chancellor (if you separate that office from the Governor) the Attorney General and the Judges of the Supreme Court—they may die; how will they be appointed *ad interim*, unless by the Executive. The power of appointing them for a whole year or more may thus rest with the Executive, whereas, if we have an annual Legislature there will be no such difficulty.

Besides this, we must give up the triennial election of the Governor, and of the Senators, upon which we seem to have almost agreed. We must also alter the report which we have discussed, of providing for future amendments of the Constitution. By that the concurrence of two Legislatures is required. Thus it will take four years before any possible amendment can be made, or any *casus omissus* supplied.

I am no agitator. I deplore as much as any man the too constant agitation of political matters in the public mind. But it is true that our safety depends upon the intelligence of the people—and nothing is better calculated to induce our citizens—our farmers—to take the public papers and keep themselves familiar with what is going on at home and abroad, than the occurrence of elections; and if they happen but once in two years, they will become an obsolete matter, and the attention of the people will only then be called to these subjects, and then under great excitement.

There is a maxim which I quote without entire approbation, although it has obtained currency—that "the price of liberty is eternal vigilance." It may be extravagant, but there is at least some truth in it—and if our citizens do not keep themselves acquainted with the progress of events, and with the improvements in political economy, there is danger of their losing that interest in public affairs, which it is most desirable should be kept up.

He made these remarks, as mere suggestions, for the purpose of eliciting discussion, and he should keep his mind open to conviction.

Mr. R. S. Kennedy was inclined to vote for the amendment. He knew it would elect our Governor and our State Senators for four years, but he was prepared for that and liked it all the better. Our gubernatorial election will be an exciting one. It is so in our sister States, and I am willing he should be elected for four years, and so the Senators—one half to go out every [other] year.

The question is, what will we gain by it? We shall gain one year's absence from political excitement. That is something, but shall we save one year's expense of the Legislature—some 25 or $20,000? and

that is worth saving. It is true we have no instructions on this point from our constituents, neither have we upon any other except to separate the offices of Governor and Chancellor, and make the Governor elective by the people. So we must go to work like reasonable men, and make such a Constitution as we hope and expect the people will ratify. As to the objection on account of vacancies which may occur, we can authorize the Executive to call an extra session to fill them. By the amendment we shall save expense, and have a uniform code of laws. Now our legislators feel that they must do something, and if new laws are not wanted, they pass supplements and additions to others, and are sure to do some things which are injurious.

Mr. Randolph said, as the mover of the proposition now under discussion, he must ask the indulgence of the Convention for a few minutes in reply to the objection which had been suggested. The gentleman from Passaic (Mr. Parsons) thought the oath in the old constitution to preserve annual elections important, as well as the practice under it for so long a time. Mr. R. said, if there was anything in the objection, it applied equally to every other part of the Constitution and then the question recurred, why were they here? Why disturb the old Constitution at all? And as to the allegation that there was no petition calling for biennial elections and sessions the same might be said of any other subject, for there were no petitions—indeed it had been objected by some that the people did not call for any amendment. But the truth was, that point had been passed, a Convention was called, and it was for it to determine what was right and proper in a new Constitution irrespective of the old charter—keep what is right but reject what is not. Something had been said about being afraid to trust the people to make laws—why, who are the people? Are we not a portion of them? Are we afraid to trust ourselves? Do not the people make the laws whether it be done annually or biennially? The learned Chief Justice had suggested that biennial sessions might suit small States like Delaware, but not New Jersey? Why is New Jersey so large? North Carolina and Tennessee had adopted the principle, no complaint had been made, no effort to amend. Might not New Jersey safely follow such examples? No difficulty could arise as suggested on account of the annual elections of sheriffs and other officers. They could as well be elected for 8 as for 1 year, and if a treasurer should become bankrupt, the State would be better off than now; for the Governor could convene the Senate at any time, whereas now there was no remedy till the end of the year. He thought the people were weary of so many elections, at least the more substantial portion of the community would greatly prefer that they should be less frequent, though more important.

The item of expense he thought of some importance, some 5000 dollars would be saved annually to the State by holding the elections and from 20 to 30,000 dollars in the expense of the legislation—this was something. He believed that by the adoption of this amendment, the annual expenditures of the State under the new Constitution might be reduced from 70 to 80,000 dollars as it now was, to about seventy-five thousand dollars, including all salaries; and as the State receives about that much annually from the railroads and canals, &c. the State might be conducted without a tax to the amount of a dollar—tell the people of this, and his word for it, no objection would be raised against biennial sessions; indeed all their objections had been against so much legislation, and so little stability to the laws. If the legislature meet annually, they must and will do something, for good or ill—they would either unsettle the public laws or occupy themselves in passing private acts that were unnecessary. Look at the list of laws passed by the last legislature. Out of 137 but about half a dozen public acts of the least account; and this is a fair sample for years back. Why should the legislature meet annually to pass divorce bills, and private laws to sell or divide real estate, or incorporate private companies, when a few general laws on those subjects would answer every purpose. In view of these things, who can say there is not too much legislation and too little stability? Adopt this amendment and you increase the one and lessen the other; and what patriot, what statesman, what politician would not desire this? Who would not desire when he got into power to be able to look around and have time to do something for the public good, instead of being kept in constant agitation and anxiety to secure the power already obtained? What party would not prefer that its adversary should be a few years in power if on success it might enjoy the same repose? This constant flickering of parties and change of legislatures was destructive to the common weal, subversive of sound legislation, and in every way injurious; and he hoped that the Convention would give it a salutary check by adopting the amendment proposed.

Mr. Vroom. I do not know, Mr. Chairman, that I can present any new or distinct ideas on this subject, but it seems to me to be an important one, and if I can present the views and ideas of gentlemen who have already spoken in another light, it may be of some service.

I am strongly opposed to this principle of a biennial legislature;

and I was surprised to hear members of the Convention, and of the Committee with whom I have the honor to act, prefer it instead of an annual one. I came here untrammeled as far as any instructions from constituents go. Those who honored me with a seat in this Convention, gave me no instructions. I do not know their opinions. I never heard one of them express any; and I did not suppose there was any idea in Somerset in favor of a biennial session. I do not know it now, and I think there is no such sentiment there. I shall therefore express my own opinions, satisfied that if I perform my duty honestly and faithfully my constituents will also be satisfied.

I cannot help thinking in running back as far as my recollection will carry me, that the idea of an annual election has been universal. We have been trained up in it. It has been the delight of the people for time immemorial. It prevailed before the adoption of the Constitution now in use, and in two sections of the country which in times long gone by were a part of New Jersey. The affections of the people are in favor of it—of an annual enactment of laws, though they are not now required to be sent across the water for assent, and our fathers in '76 made their representatives swear that this principle should remain inviolate.

It has been handed down from father to son ever since. It has become our inheritance, and all have enjoyed it. The principle is engrafted on our whole system. Are not all our town meetings annual? Are not all the town officers elected annually in New Jersey? Why not carry out the principle if it will prevent turmoil and difficulty and trouble, and [why] elect all these officers for two years?

There is excitement at these elections—and as much interest felt to secure the success of some of these offices as of higher ones.

I am therefore attached to this system. I love it as a system, and believe the people love it; and I cannot consent that it shall be changed, unless the people themselves wish it, or strong reasons are urged to induce me to change my mind.

Let us look at it, what are the reasons for the change? In the foreground, it is said it will save expense and prevent unnecessary legislation. Now if I thought this was the only or best mode of obtaining these great objects, I would support it with my heart and hand. But I think these objects may be attained, and yet retain this great feature.

The objection has arisen, that the Legislature meets at an inconvenient season of the year, and although they used to come together and remain and finish their duties, now they cannot and will not do

it. And the first session, is now, a mere coming together for the purpose of organizing—of setting the wheels of government in motion and reviewing the annual accounts of the Treasurer and of the State Prison, and thus the first session lasts for some three weeks. There are too, long lists of nominations brought in—and crowds of hungry expectants of office who must be attended to—and days and nights are employed in this kind of business. Now this can't be avoided. It grows out of the old Constitution: and in the second session, the work of legislation begins, and goes on through the season. The members have their pay and emoluments, and many are making more here than they can at home; and this swells the amount of expenditures; now if this can be provided against in no other way let the amendment prevail. But if it can be done in another way I should prefer it, and I hope therefore that the principles of the report on the legislative Department, presented this morning, will be adopted. That will cut up the evils by the roots. There will be no adjourned sessions. The legislative year will commence in January, and the Legislature will convene in January—with this provision before the eyes of our representatives, that the people are watchful and jealous of them, and have thrown these checks and guards around them.

They will be allowed 40 days to do their business, and if they remain longer, their pay is reduced to a mere support. And without this, they would stay here till spring begins. Thus shall we save half the expenses of legislation, and be enabled to move along without any direct tax. Let us first get clear of our State debts and then the expenses of the State government will be met or nearly so by the annual resources of the State.

But another argument has been advanced for biennial sessions, that it will prevent agitation, and calm the surges of political excitement, and give us a little rest. Sir, there is a kind of political rest which I never desire to see. The gentleman from Essex, the honorable Chief Justice, hesitates and doubts about the maxim that "eternal vigilance is the price of liberty." Sir, I believe there is great truth in it. But what will be the great incentive to agitation in an annual election? What will be the duties which our representatives will have to perform? To appoint magistrates, Justices of the peace, and multitudes of officers from those who throng your halls of legislation? who are active at the polls, and at Conventions to secure their own selfish ends?. No, sir, no, and if you take the appointing power from the Legislature, there will be no incentive to this kind of agitation. To come to the Legislature will be like filling an office of honor or trust—

they will come to make laws and not Justices of the Peace! They will come to meet the wants and wishes of the people—and not to fill the benches of your County Courts with supernumerary Judges! The Treasurer may be appointed by the Legislature, and some other small offices immediately appertaining to the government may be filled by them—but with these exceptions, I hope the appointing power will have no place in our halls of legislation but will be fixed by the Constitution in another place; and that the election of our representatives will be as they used to be—which I and others here as old as I, can well remember—when the people voted for the *best man*—for men who understood the wishes of the people and would make the best laws for them. When this shall again be the case, annual elections will do no harm.

Now as to private legislation. I know there has been too much of it—and I don't advocate it to the extent to which it has been carried or anything like it; but there is a species of private legislation, to which we have been accustomed from our infancy, and which is necessary legislation. Many cases of this kind arise annually—and it would be a great hardship if it was not in the power of the legislature to remedy them—cases which are out of the strict provisions of the courts or the law and for which you can't make a general enactment. We have been accustomed to them from the time of Leaming and Spicer down. A commissioner makes some mistake in the acknowledgment of a deed,—or acts by mistake after his commission has expired, by which rights are passed or supposed to be: how often is the Legislature called upon to supply these defects? And it is just and proper. It can injure no one—except those who would take advantage of a mere technicality to overturn honest rights, and the people wish relief in these cases.

There is a great deal of private legislation that ought to be avoided, to which my friend has referred—such as divorces and the sale of land belonging to infants. I hope no more divorces will be granted by our Legislature. There has been too much of it. These cases require time, and caution and knowledge—whereas they are often hurried through the Legislature as if by steam. I have always protested against this species of legislation. Let these cases go before the Chancellor. If his power is not large enough, let it be increased. Give him power over all cases, but let us have no private or special legislation in these matters.

I apprehend therefore, that the difficulty as to expense is done away, and the question of agitation is not now under consideration.

Now I ask if the innovation would be a wise one? We are not sent here to try experiments, but to adopt a Constitution, right in itself, and which the people shall like. The question resolves itself into a mere question of expediency, and we must do as our constituents deem best.

I trust the Legislature will be constituted on a more stable basis, and that one branch will be a different class of man from the other. I think it is a matter of commanding importance, that we should increase the time of office of the Senate—and I would not risk this for the advantage of biennial sessions. If we do not elect the Senate for three years, we shall lose all the benefit that we have anticipated. But I do not believe in electing the Senate and Governor for five [four?] years. The people will not consent to it. It is out of the question. If you elect the members of the Senate for *two* years, and have only a biennial session, both houses will hold their office for an equal length of time. You have not the checks you desire, and this consideration is entitled to some weight.

One word as to the Constitutions of other States. It is said that Delaware is satisfied with the provision, but they are a different people from ours and what would satisfy their wants, would not satisfy the wants of the people of N. Jersey. In one or two of the new States, it was adopted when they were young, and their population scattered and they may still retain it—but in Mississippi it is an immense journey for the legislators from the upper parts of the State to get down through the Indian country to Jackson, the seat of Government. And therefore they dispensed, in their infancy with an annual session, but I don't believe it will last there. Difficulties have arisen—and this has happened in Miss.: Some nine months since the Legislature had to elect a U. S. Senator to fill a vacancy which will not occur until next March—so that nearly two years will elapse from the time of his election before he can take his seat.

But there is no necessity for biennial [annual?] sessions in Mississippi. There the Legislature elect no officers—not even the Treasurer. The Governor, the Chancellor, the Judges, and every officer down to the constable is elected by the people. There is therefore no reason for calling even the Senate together to confirm appointments.

But I will not detain the Convention. I do not feel that if the Convention adopts this principle, that it is wrong in itself and if no others are adopted which infringe further upon my views, I shall lend all my aid to have the constitution adopted by the people. But I think it will be more satisfactory to them without this provision, and I shall therefore vote against it.

Mr. Parsons followed Gov. Vroom, in reply to Mr. Randolph.

Mr. Child rose simply to correct an error of the gentleman from Middlesex. He has said that the annual saving will be 20 or $25,000. Now that will only be saved every *two* years as is apparent.

Mr. Randolph said he had made his calculation in this way. The Legislative expenses are some $30,000 and those of the election some 7 or 8000, and if each is saved every other year, the annual saving will be some thing like what I mentioned.

The amendment was not agreed to.

The committee rose, and reported the same to the convention, with sundry amendments, and,

On motion of Mr. Stites, were discharged from the further consideration of the same.

The report and amendments were ordered to lie on the table and be printed.

On motion of Mr. Child, it was

Ordered, That when this convention adjourns, it will adjourn to meet to-morrow morning, at eight o'clock.

The convention then adjourned till to-morrow morning, at eight o'clock.

Wednesday morning, 29th May.

At eight o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Hall.

On motion of Mr. Randolph, it was

Resolved, That the stated hour for the meeting of the convention be at nine o'clock A. M., until otherwise ordered by the convention.

Mr. J. R. Thomson moved that the Convention would hereafter proceed to act as a body on the remaining reports, without the useless machinery of going into Com. of the whole, which he argued was a mere waste of time, as all the matters were again free for discussion.

Mr. Parker opposed the motion as contrary to all legislative proceedings, and after some few remarks, Mr. Randolph moved that the Convention go into Committee of the whole, and as that motion always had precedence it was put and carried, Mr. Haight in the chair, upon

the consideration of the report of the Committee on a Bill of Rights and Privileges [see Index for text].

Mr. Parker moved that the Clerk proceed to read the bill and to pass over each section without taking the question on it separately if no amendments were offered. The bill was a compilation of truthful axioms and sound landmarks which would serve as a guide to legislation, taken partly from the Constitution of the U. S. and in part from those of other States, which speak for themselves.

[illegible]ng—I have no objections to offer to the principles declared in the bill of rights. It is one founded on correct principles but I see no necessity for a bill of rights at all. If the venerable framers of the Constitution under which we live, if the Constitution of the U. S. made no provision of this kind, cannot we get on without it? It will take up much time, and if we propose to discuss the principles contained in it, there will be certainly a difference of opinion. It does not lead to subjects of legislation. The truths in this bill of rights are universally recognized, and will be universally supported. Mr. Ewing considered it as entirely unnecessary and moved to dispense with the consideration of the bill at all.

Mr. Child—If we dispense with the bill of rights, the reports of the committees which are before us will be incomplete, and will require an alteration which will consume more time. If we had concluded in the first place not to propose any bill of rights the matters contained in it, would have been provided for in the Committees.

Mr. Hornblower—Some of the articles in this bill of rights are no more than mere abstract propositions of self-evident truths, and unnecessary—But there are other matters which ought to become parts of the Constitution. For instance the 3d and 4th articles. These and other provisions must be incorporated in the Constitution. Since the committee has reported a bill of rights, I hope the convention will proceed to dispose of it in the order presented.

Mr. Ewing—These are only abstract propositions which are improper here, and will only serve to confuse the minds of the members. That there is much useless matter all will be disposed to acknowledge, and if disposed to discuss the point, I should find very little difficulty in proving that all are not true, as for instance in the 1st article.

The motion to dispense with the bill of rights was after a few more remarks from Mr. Ewing, lost.

The first article was then considered, and Mr. Hornblower moved to insert after word *certain* in the 1st line, the word *equal*.

Mr. Ten Eyck—This amendment if adopted may lead to inferences

which are not now thought of.

Mr. Condit—I hope the convention are not afraid to acknowledge that principle. It is one universally acknowledged. It is so in the constitution of many of the States. I hope the truth of the principle will not be denied, especially by a member so pure and right-minded as the gentleman from Burlington.

Mr. Clark—I object Mr. Chairman to this amendment as unnecessary. All men are born equal and free. That is true in the abstract sense. If they are born equal and free they have certain equal rights. I object to the insertion of the word as it is tautological.

Mr. Allen—I want all parts of this constitution to be consistent. We have made a provision declaring that all *white* male citizens shall enjoy privileges, and here the gentleman would have *all* men enjoy the same. One part of the constitution will make all men equal, while another part does not. If men are born equal when do they lose this equality. Is it after their birth? I think the word unnecessary.

The motion to insert *equal* was lost, and the 1st article was passed over without amendment.

Art. 2—Mr. Schenck—The phraseology here is too broad. If we mean the whole human race it is correct, but if we mean to confine it to the citizens of New Jersey, I think we have no right to make the declaration. We have no right to change the government to an aristocracy or monarchy, because we are prohibited by the power which we have conferred on the citizens of the U. S. Congress is bound by the Constitution to preserve the republican form of government. We possess no power to establish a form of government inconsistent with the provisions of that Constitution, and I propose as an amendment to be inserted at the close of the article "provided such alterations be not inconsistent with the Constitution of the U. States."

Mr. Hornblower—I move to strike out all after word people in the 1st line.

Mr. Schenck, I accept that amendment.

Mr. Allen—The whole item is unnecessary; we have no right to pass any laws conflicting with the Constitution of the U. S. I move to strike out the whole.

Mr. Ewing—I second that motion. If we look at the truth, it is the reverse of the case in 99 out of every 100 cases. The people have no right inherent in themselves, and if applied to the people of our own State, it is not so. This can answer no valuable end.

Mr. Naar—The gentleman argues as if the State of New Jersey was a mere appendage to the United States. It seems to me however

that we are a free and sovereign people. If the prophecies of men in these times are to be fulfilled, the time may come when the union will be severed, and when that instrument now known as the Constitution of the U. States, will be annulled, and then we shall have no declarations by which the people may choose the form of government they will adopt. It is an abstract principle it is true, but not the less true for that. It is a principle universally acknowledged, engraved on the hearts of all men, and why, omit it, simply because the Constitution of the U. S. guarantees it to us.

Mr. Hornblower—I withdraw my amendment, and will take the sense of the convention on the motion to strike out the 2d section.

Mr. Jaques—I hope the gentleman does not want it understood by the Convention that we deny the principle that political power is inherent in the people. We are in the act of altering our government, and will we have it go out and understood by the people that we deny this proposition? I think not. I am willing to amend so far as to strike out all after the words "reform the same," and if that is adopted I will after the Bill is gone through with, offer an amendment which I hope may meet the views of all. For my own part, I would not consider it safe to go home after voting to strike out this proposition. The people would pelt me with rotten eggs or brick bats, or any thing they could lay their hands on.

The motion to strike out was lost.

3d article—Mr. Randolph moved to strike out words "contrary to what he believes," but did not press it.

Mr. Condit offered as an amendment to be added to the section "But liberty of conscience is not to be construed to excuse acts of licentiousness, or justify acts inconsistent with the peace and liberty of the State."

Mr. Ten Eyck—I hope this will not be adopted. It is susceptible of a wide and extended construction. It looks like one of the provisions in the Constitution of the U. S. which has been considered inconsistent. If a clause of this kind is inserted it may lead to great difficulties. This is an old provision, and if men will act so as to disturb the peace and harmony of society, the laws will be found sufficient to punish them. It can afford no additional protection to the citizens, and as it is unnecessary, I should regret to see such a provision adopted.

Mr. Condit thought it a very proper provision.

Mr. Parker opposed it, mainly on the ground that it would be in the power of Legislatures to declare what constituted licentiousness,

and would interfere with the well known maxim that a person has a right to act and think as he chooses provided by so doing he does not injure others or disturb the public peace.

The proposed amendment was lost.

The 4th section was passed over without any amendments.

5th Section—Mr. Browning moved to strike out the whole of the last line "and the Jury shall have the right to determine the law and the fact." It is he said a principle in the administration of the Common Law, that the court shall determine the Law and the Jury the fact, and this provision of the constitution I wish to keep separate and distinct. I do not know why the Law in prosecutions for libel should differ from that in ordinary cases. This may lead to very important results.

Mr. Hornblower. The difficulties in my mind, are as to the operation of a provision like this one. It has grown into a maxim, that in prosecutions for criminal offences, the Jury may determine the law and the fact, and yet there never has been any constitutional provision to that effect. No court has yet ever undertaken to set aside the verdict of the Jury when the party has been acquitted, and to grant a new trial. When a man is on trial for murder or for an inferior offence, the court lays down the law and if the Jury set that law aside and bring in a verdict of acquittal contrary to all the principles of law, the court will not set aside that verdict and grant a new trial. In civil cases, this may be done, and it is done where parties have been convicted in violation of the principles of law. If the Jury have a right to disregard the law and should acquit a prisoner, and the court should see that the verdict was manifestly unjust, what right has the Court to find fault with that verdict tho' rendered contrary to law. If this provision remains, I shall feel trammeled.—If when sitting on a case of life and death the jury should disregard my directions as to the nature of the crime, whether murder or manslaughter, and should bring him in guilty of murder, I should not like to be told that they overrule me and that the man must be hung contrary to law. The Jury now in criminal cases have a right to acquit contrary to law, and the court cannot prevent it. They have the power to do it, and the Court cannot restrain them. It would be a hard case where a man had been unjustly convicted that I should have to say, you must be hung because the constitution gives to the jury the right of determining the law and the fact, and I cannot grant you a new trial.

Mr. Parker. The gentleman says he has never heard of a new trial being granted in case of acquittal, and why is that so? Because it is one of the fundamental principles of law that a man's life shall not be put twice in jeopardy for the same offence. I do not see why in questions involving personal liberty and the right of free discussions we should not have the right to appeal to our fellow citizens.

Mr. Hornblower. The law is as the gentleman states, but insert this provision in the Constitution and do you not restrain the court from granting a new trial on a conviction contrary to law? This has occurred in one of the New England states, where one of the circuit Judges refused to grant a new trial, as the court was restricted by the Constitution.

Mr. Randolph. I hope, Mr. Chairman, this amendment will prevail. This is a question involving important principles, and we might commit great injustice by adopting this provision. It is, in my opinion, unnecessary. The preceding part of the section provides for all that is essential. We have a statute on this subject which has received a different construction. (Mr. R. here read the statute). In New York some of the Editors in this contest with Mr. Cooper, have long been tried and kept in ill humor because in actions in libel, they have not been allowed to give the truth in evidence. What is the effect of this? It is understood as a well settled principle of law, and especially in actions for libel, that the Jury shall be judge and Jury. No matter how they may have been selected—no matter what may be the subject of the libel—no matter how dear the rights of the individual, and how willing the Court is to declare the Law. This provision declares that the Court has nothing to say on the subject, but the Jury are to be the sole judges of both the law and the fact. You are to try actions for libel on principles of law contrary to those applicable to all other cases. You are to say that this kind of action is the only kind in law which shall be left to 12 men to say whether the party shall be punished or not—not whether he is guilty or not—but whether according to the atmosphere of the jury he ought to be punished. This is a dangerous principle. Apply it to criminal cases, and what is the effect. Are there not cases where the feelings of the community—where the excitement of false impressions would lead to a conviction of a party who might be innocent. Apply this to the case in point, and what would be the result in 8 cases out of ten. There would be convictions—no matter what might be the law. I accord to the Chief Justice in the propriety of the sentiment that it would endanger the important principles of the right to a new trial.—If you adopt this you take from the Court all power to grant a new trial, no matter

under what circumstances a conviction might have been rendered.

As it would operate with this amendment, if a person is incorrectly convicted, the Court may and would grant a new trial. Adopt this and you take from the Court all power of granting a new trial, and why should this distinction be made in actions for libel? I conceive that the subject has not received that calm and considerate investigation from the Committee which they generally bestow on matters referred to them.

Mr. Vroom. I hope Mr. Chairman, this amendment will not be adopted. It is an important feature in the bill of rights, and the gentleman is mistaken in supposing it has not received due consideration. I would remark that it is transferred from an article in the constitution of New York adopted 20 years ago. That article was adopted in the courts there after the most solemn and deliberate reflection forty years ago, and grew out of a series of state prosecutions. [For review of the N. Y. precedents see opinion of the N. J. Supreme Court in Drake *vs.* State, 53 N. J. L. 23, 1890.] You will find this principle advocated in the celebrated case of the State of New York *vs* Croswell. The section was embraced in the argument of one of the greatest Lawyers that State ever produced, Gen. Alex. Hamilton, who was counsel for the Defendant, and the rights which he then proclaimed and defended in behalf of his client were embodied in a separate law and afterwards engrafted on the constitution [illegible] there. it will stand as a monument of the intelligence of the bar, and the wisdom of the Convention by whom it was framed. Look at the history of the law of libel for years past. It has been agitated in Westminster Hall and here. In the English Courts, the law as to libel was, that the Jury had nothing to do with the libellous matter. All that was for the Jury to pass on was the publication, but whether libellous or written with good ends and justifiable motives, was not a question for the jury. It was this decision which brought about that great struggle for civil liberty between the courts and the Jury, but in which the Jury triumphed.

Now it is their province to pass not merely on the question of publication, but it is their province to say whether it is libellous or not. The main question in an action for libel depends upon the intention with which it is written or published. If the matter is proved true, and it is also proved that it was written with good motives and justifiable ends, it is no libel, but that is a question for the Jury. The truth too may be given in evidence and that was a great point gained here. But the truth even will not save the offender unless he can establish good

motives and justifiable ends. Who is to decide this? That is a question of law and that, the Constitution says the jury shall pass on. The judge may say that the words are libellous, but if the motives were good, and the ends justifiable it is no libel, and that the jury are to determine. And it is for the benefit of the citizens themselves that this is left to the jury. This provision is intended for the protection of the citizens, and there is no danger that the power would be abused by them. It is the most important feature in the whole section. Take it away and you leave the whole power in the hands of the Court. The question comes up it may be true before the Court, but good motives and justifiable ends enter into the essence of a libel. That is part of the law of libel, and the law and the fact so blended together to constitute a libel, is left to the determination of the jury. I hope the amendment will not be adopted.

Mr. Jaques. It seems to me that the argument in favor of the amendment tends to degrade the jury and to render them unpopular. If I understand the privileges of a juror, he has not only a right to judge of the Law and the fact, but of the equity also. The judge merely presides to regulate the proceedings and expound the law—not to direct what constructions are to be put on it, but what is the general acceptation. This system of trial by jury was instituted in England very long ago, and prevailed until the Norman conquest, when the right was restricted—almost done away with and a system of laws introduced, unjust and arbitrary in principle and in operation, and the struggle from that time to the present has been between the judges and jurors. We have here it is true made more progress than in England toward restoring the rights to jurors, and this opposition to extend to them their rights grows out of the peculiarities of our education. The arguments in favor of striking out are aimed at the rights of jurors, and they must be restored, or the liberty of our country is held on a slender thread.

Mr. Hornblower, rose to explain—He had been misunderstood—His only object was to get rid of the embarrassments into which he would be thrown by this provision.

Mr. Browning—The object of this is to keep with reference to the law of libels, the province of the Court and Jury separate and distinct. There is one fundamental principle at the foundation of all trials, that the Jurors are judges of the fact, and the Court is to expound the law. If this report is adopted, we shall have an anomaly in reference to actions for libel varying from all other prosecutions. And why is this—are jurors more competent to judge of the law of

libel than of other cases?

It may be true that this provision grew out of the excitement of the Croswell cases, but excitements are not proper sources to be appealed to, but to cool deliberation and consideration.

In the sense in which jurors are made judges of the law and the fact, they are so in all criminal cases, where they are so blended as not to be separated. It is the duty of the Court to charge what the law is with reference to a particular state of fact, and the Jury are the Judges of both. What would be the result? A prosecution for libel comes on and the question arises whether certain facts are properly in evidence. The Court is appealed to and decides them to be improper. The jurors hear the discussion and carry it with them to the ballot box and there a contest arises. One juror says, the Judge was incorrect, and I will found my verdict on that evidence. Which is to be the Judge of that matter? If the Jury are to be judges of the law and the fact, why not with regard to the evidence as to the final result.—What may depend on the ruling out of certain testimony. What comparison do you create in the minds of the jury. Each one has his own idea upon the law and thus 12 varying individuals will prevail over a well settled principle of law.

It is said that intent is a great feature of the libel.—The intent is not a question of law. It is a fact, and the jury will determine whether a publication has been made with good and justifiable motives or not. With what intent a stroke is given which has caused death, is a fact for the jury and constitutes no principle of law.—And as to the principle of evidence—establish the provision that jurors are judges of the law and fact, and though the judge may rule out evidence as improper, the foreman may rise and say we are judges of that and think it ought to be received. Is the Court to charge the jury what the law is, or is he to remain mum? Is he to say, gentlemen, you are the judges of the law and the fact; ground your verdict as you please on passion or on principle. No sir, you would have this, and what a farce then it is for a judge to charge, when he has no power to explain to say what the law is.

Why, I submit should this anomaly be introduced in the law of libel, is the Court less intelligent—less honorable, more liable to corruption—or are the jurors more pure? Can passion, or prejudice, or feeling invade the ballot box with less force than in other trials. I must enter my protest against introducing an anomaly which may lead to dangerous results.

Mr. Field—This is a grave and serious question, and although

I did not come prepared to meet it, yet it comes before us in such a character, I feel constrained to throw out the few reflections which have occurred to me. I do not think the Committee differ so much as to the principle, as to the application of the principle to the law of libel. There are I think, no two individuals in this Committee, who would not concur in the opinion that in all prosecutions for libel, the jury should be judges of this question of law, whether the publication was true, and whether made with good motives and justifiable ends. Is there any question of law to go to a jury in actions for libel, save the questions embraced in the preceding paragraphs of this section? If they are permitted to decide whether it is true, and whether made with good motives & justifiable ends, is there any other question of law? and if not, is there any necessity for the closing paragraph? The difference as to the law of libel is not fairly stated. Why except to a general rule of law. It is a well known maxim, *ad questionem juris, respondent judices, ad questionem facti, respondent juditores.* Is not that a maxim without exception? Does the gentleman propose to trample this under his feet?—I am sure he does not. He is too good and sound a lawyer for that. Actions for libel are made exceptions to this rule and why? In the celebrated case of the King *vs* the Dean of St. Asaph, Lord Mansfield held that the only questions for the jury were the fact of the publication and the truth of the innuendo, and that all others were questions of law, and the jury had nothing else to do. That was the great point of the controversy. The great question in that and in all similar cases, was whether the jury were judges of the law and the fact, and it was while contending for this, that Lord Erskine delivered some of the most beautiful, able and eloquent speeches that have ever been heard. He contended that the question of motive was one of fact and the Courts triumphed. Lord Erskine was overruled, but it led eventually to the celebrated libel act of Mr. Fox, in which was settled that in such cases, the jury were judges of the law and the fact. These are wholesome and salutary provisions, and I am willing to see them incorporated in the Constitution, and I ask if every object is not effectually answered by them? If you adopt the last line, which is now moved to be stricken out, the consequences cannot be contemplated. This clause was introduced in N. Y. on the occasion of questions of great excitement, and under such an influence the constitution was framed, and this paragraph adopted, to which for one I never will subscribe. I should like the gentleman to state where this provision is to lead us?—If he only intends that the jury shall pass upon the motives and ends of a publication, we all

say yes.—Let the jury determine that, but shall we say that the jury shall determine all questions of law in all actions for libel? As to the objections which have been made with reference to evidence, would it not be mockery to say the court may decide upon the admissibility of evidence, and yet to say the jury shall be the judges of the law and the facts. It is not the province of the jury to say whether evidence is legal or not. Is the gentleman prepared to sanction a provision of this kind? I cannot. It seems to me that every position will be satisfied by adopting the preceding paragraph of the section.

Mr. Vroom replied to Mr. Field, and showed that this provision making juries judges of the law and the facts in libel cases, has been engrafted on the Constitutions of several states, and the question being put on the motion to strike out as made by Mr. Randolph, it was lost.—Ayes 16, Nays 28.

Mr. Randolph then moved to add to the end of the section the words, "under the advisement of the court."

Mr. Halsted, who had voted against the other amendment, opposed this, as did Mr. Vanarsdale, and it was lost.

Mr. Hornblower moved to add to the section these words: "but this provision shall not be construed to take away the power of the court to grant a new trial in case the verdict shall be against the defendant." This was opposed by Mr. Parker and Mr. Vroom as unnecessary, and it was lost.

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

On motion of Mr. Allen, it was

Ordered, That when this convention adjourns, it will adjourn to meet to-morrow morning, at nine o'clock.

The convention then adjourned till to-morrow morning, at nine o'clock.

THURSDAY MORNING, 30th May.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Starr.

The Vice President in the chair.

Mr. Vanarsdale, from the Committee on the Judiciary Department, made the following report:

The committee appointed by this convention on the judiciary department of the constitution to be formed, respectfully report—

I. That the judicial power of this state shall be vested in a court of errors and appeals in the last resort in all causes, as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court, and such other courts as now exist, and as may be ordained and established by the legislature.

The court of errors and appeals shall consist of the chancellor, the justices of the supreme court, and six judges, or a major part of them; which judges are to be appointed for six years.

Immediately after the court shall first assemble, the chancellor, or, in his absence, the chief justice, or any justice of the supreme court, shall arrange the six judges in such manner that the seat of one of them shall be vacated every year, in order that thereafter one judge may be annually appointed.

Such of the six judges as shall attend the court, shall receive, respectively, such per diem compensation as shall be provided by law.

The secretary of state shall be the clerk of this court.

When an appeal from an order or decree shall be heard, the chancellor shall inform the court, in writing, of the reasons for his order or decree; but he shall not sit as a member, or have a voice in the hearing or final sentence.

When a writ of error shall be brought, no justice who has given a judicial opinion or judgment in the cause, in favour of or against any error complained of, shall sit as a member, or have a voice on the hearing, or for its affirmance or reversal; but the reasons for such opinion or judgment shall be assigned to the court in writing.

II. The House of Assembly shall have the sole power of impeaching; and all impeachments shall be tried by the Senate: the members, when sitting for that purpose, to be on oath or affirmation "truly and impartially to try and determine the charge in question": and no person shall be convicted without the concurrence of two-thirds of the members of the Senate present.

When a governor or chancellor is tried, the chief justice shall preside; and when a chief justice or an associate justice of the supreme court is tried, the chancellor shall preside. When the chancellor or chief justice shall preside, he shall have a vote when the members are equally divided on preliminary questions but shall have no other vote.

The person impeached shall be suspended from exercising his office until his acquittal; and the judgment shall not extend farther than to removal from office and to disqualification to hold and enjoy

any office of honour, profit, or trust under this state; but the party convicted shall nevertheless be liable to indictment, trial, and punishment according to law.

The secretary of state shall be clerk of this court.

III. The court of chancery shall consist of a chancellor who shall be appointed in the same manner, hold his office for the like term, and receive the same salary as the chief justice of the supreme court.

IV. The chancellor shall be the ordinary, or surrogate general, of the prerogative court.

All persons aggrieved by any order, sentence, or decree of the orphans' court, may appeal from the same, or from any part thereof, to the prerogative court; but such order, sentence, or decree shall not be removed into the supreme court, if the subject matter thereof be within the jurisdiction of the orphans' court.

The secretary of state shall be the register of the prerogative court, and shall perform the duties required of him by law in that respect.

V. The supreme court shall consist of a chief justice and five associate justices.

Six several terms of the court shall be held in each year. Two of the said terms shall be held in the eastern part of the state, two in the middle part of the state, and two in the western part of the state, at such times and places as the legislature, from time to time, may ordain and establish.

Any one or more, and not exceeding three of the justices, shall hold the said courts at any of the said terms; but the concurrence of two of the justices shall be necessary to a decision in every controverted matter: and the said justices shall arrange among themselves to hold courts, alternately, at said terms.

The present clerk of the supreme court, during his continuance in office, shall attend all said courts personally, or by a deputy appointed by him to act in his stead, until the legislature shall prescribe which of the said courts he shall statedly attend: and whenever there shall be two or more clerks of the said supreme court in office, each one, on the first and third Mondays in every month, shall transmit to the other, or others, a duly certified transcript of all the judgments which shall have been docketed since that time, and afterwards, since the time of making the previous transcript; which shall be a true transcript of the original docket that is to be kept in his office: and that no inconvenience may arise from this article being carried into effect, the supreme court shall continue to be held at the times and place when and where it is now held, until the fourth day of July, one thousand

eight hundred and forty-five.

VI. One of the justices of the supreme court for the time being shall be one of the judges of the orphans' court now existing in and for the several counties of this state, in all cases, except every regular term of the said orphans' courts when no circuit court is held in the county, such orphans' court may be held without a justice of the supreme court; but nothing in this article contained shall at any time hereafter abridge or restrain the power of the legislature to alter, change, or annul the same, and ordain otherwise, as the public interest may require.

VII. There shall be not less than three, nor more than seven judges of the inferior court of common pleas, in and for each of the several counties of this state.

This provision shall take effect in each county, when the number of said judges now in office in said county shall not exceed seven.

VIII. There shall not be less than two justices of the peace for the number of townships in each county in this state, nor more than —— justices of the peace in and for any of said counties; and this provision shall take effect in each county, when the number of said justices now in office in said county shall not exceed ——.

IX. All justices of the supreme court, and all other judicial officers now holding any office or appointment from the joint-meeting of the legislature of this state, shall, respectively, continue in the exercise of the duties of their respective offices, according to their appointments, for the times allowed by law.

By order of the committee.

ELIAS VANARSDALE, *Chairman.*

Dated 30th May, 1844.

Which was read, laid on the table, and three hundred copies ordered to be printed.

[A]This report has been agreed to by Committee in many respects, unanimously—but there are certain parts of the report and some matters omitted, which some of the members reserve the right to apply to have the report amended—which will be mentioned at a proper time, if considered advisable to do so.

(Mr. Randolph and Green both have substitutes to offer which will be printed)

[J]Mr. Randolph, of the same committee, offered the following, as a substitute for articles six and seven of the foregoing report:

Art. VI. The orphans' court, and the court of oyer and terminer and general jail delivery, in each county of the state, shall be held

by one of the justices of the supreme court and the judges of the inferior court of common pleas appointed under this constitution, or by any three of them.

Art. VII. From amongst the judges of the inferior court of common pleas, now holding commissions in the respective counties of the state, five shall be selected and appointed to be judges of said court under this constitution; and after the commissions of the judges now in office shall expire, there shall be but five judges of said courts. The judges of the said court shall be appointed for the term of five years, and at the first term thereof, held in the respective counties, they shall arrange themselves in such manner that the seat of one of them shall be vacated every year, in order that one judge may be annually appointed or re-appointed. The legislature may at any time hereafter increase or lessen the number of associate justices of the supreme court, or change the mode, or terms, or places, of holding the same. The mode of appointing the six judges of the court of appeals may be changed, and their number increased, so that they shall never exceed in number the justices of the supreme court and the chancellor. The legislature may also abolish, or otherwise alter, any of the courts of the state, except those specified in the first article; but the number of judges of the inferior court of common pleas and of justices of the peace, in the respective counties and townships, shall never be increased.

Which was read, ordered to lie on the table, and be printed with the report of the Committee on the Judiciary Department.

The convention then resolved itself into committee of the whole, Mr. Haight in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on a Bill of Rights and Privileges, and took up the 7th article of the Bill of rights, which was passed over unamended, though Mr. Browning suggested the propriety of regulating the trial by Jury with reference to trifling amounts.

8th section.—Mr. Clark moved to strike out the words "in his favour," and insert the words "his witnesses," which was not agreed to, and an amendment to insert the word "have" (the assistance of counsel) was agreed to.

Section 9 passed.

Section 10—Mr. Hornblower, I am not sure that this is necessary at all, or at least so much as is contained in the 1st line, as it is a well settled principle of the common law, that no person shall twice have his life or property endangered for the same offence. To prevent

difficulty however I would suggest that those words be inserted, after the word offence "providing that it shall not prevent a 2d trial after conviction—or in case of the disagreeing of the Jury, or the sickness of a juror, or other causes which may tend to arrest a trial."

Mr. Ogden moved to insert instead thereof the words, "no person after acquittal shall again be put in danger of punishment for the same offence."—which were accepted by Mr. Hornblower.

Mr. Ten Eyck thought the provision unnecessary.

Mr. Hornblower—In New York, a provision similar to the one now before us, has occasioned great difficulty. This question has been raised on the prosecution of criminal cases and carried from Court to Court, until it reached the Court of Errors. In a case where a man was tried for manslaughter, and the Jury could not agree, a new trial was objected to by his counsel under this very provision. Why have this matter opened for doubt at all, when the amendment will settle it.

Mr. Parker—The principles on which this report was founded, were those which the Committee considered as essential to the preservation of liberty, and the security of life and property, and the phraseology was adopted from consultation of precedents which conveyed the idea we intended to convey better than we could do it ourselves. There is no doctrine of the common law better established than the one that no party shall be subjected to a second trial for the same offence, after he has been acquitted, and such was the idea, which the committee intended to convey. Does it involve the consequence that because a party has been convicted, he shall not be entitled to a new trial. It is not putting him in jeopardy the second time, as it is intended to nullify the operation of an unjust verdict, and give the opportunity of a fair trial. In New York or in Pennsylvania, a verdict of conviction may be set aside for good cause (Mr. Parker here read the clauses in the Constitutions of those States referring to this question.) The gentleman quotes the cases in New York, where persons convicted of crimes have carried their cases up and by the aid of counsel and money have got the verdict set aside, and then pleaded this provision as a bar to a new trial, but let him devise any expression which may not admit of litigation, and as to the construction of which Judges of the highest learning and talents, will not differ, and sometimes the same man will hold different views on the same subject at different times. It is no more than an assertion of the common law under which we live.

Mr. Hornblower. We do not quarrel with the principle. But let

this provision remain as it is, and we shall have the question raised at once in our courts. Suppose a case to have been regularly tried and submitted to the Jury. One of them is taken sick or by reason of disagreement the Judge is compelled to discharge them. We shall have the question raised whether the party has not once been put in danger, and this objection raised to a second trial. When is a person in danger. Why from the moment of indictment he is in danger.—I move to add also the words "and pardon after a conviction."

Mr. Williamson. I hope this will not prevail.

Mr. Condit was in favor of the first amendment of Mr. Ogden but thought the second [Hornblower's] unnecessary.

Mr. Ten Eyck again hoped the amendment would not prevail but that all possible security would be preserved to the unfortunate persons to whose cases this provision was expressly applicable.

Mr. Clark. According to the construction which has been given to this it would seem as if an informality in drawing the indictment, or some irregularity in the proceedings would do away with all the proceedings against a criminal. Such is not the object of the article. The object is that a man shall not be put to the necessity and expense of defending himself a second time against the same charge. It is intended that mere informality shall not afford him protection, and that a rogue shall not escape by reason of a clerical error in drawing the indictment. The amendment will have the effect of putting a practical construction on the words of the section. The real object to be obtained is, that a party who has been acquitted either by judgment of Law or by the verdict of a jury, shall not be a second time put in jeopardy. We are bound to follow the terms in other constitutions the construction of which has been settled.

Mr. Vroom. I am not in favor of the amendment, and because we find the same terms in the constitution of many of the States, and the same language in substance is used in the Constitution of the U. S.—We are following safe precedents, and I think the danger which the gentleman apprehended is imaginary.

The gentleman says the definition and meaning of those words in the constitution of the U. S. and of several other States is not settled. These terms have been settled and those in the Supreme Court of the U. S. and there is no difference of opinion at this time as to their meaning. In the Supreme Court of N. Y. they have frequently been settled—(Mr. Vroom here read opinions in the case of the State of New York vs. Stoughton and the U. S. vs. Price.) A case also has been settled in the Supreme Court of this State, that of the State

of New Jersey vs. Jno. W. Hall which I find in 4 Wheaton pp 656 [a lapse of memory; the case is in 4 Halsted, now cited as 9 N. J. Law 256 (1827)]—In that case I was concerned as counsel for the defendant and the Jury did not agree. The case was brought up again on an argument for a new trial and it was held that he was liable to be tried again as in the legal sense it would not be placing him in jeopardy. The matter I think is fully settled and I am fearful that the amendment would be an anomaly and lead to misconstructions.

Mr. Clark—Do not the cases cited furnish any reason why the word should be embodied in the section to do away with all difficulties? If not, embody it in the Constitution.

Mr. Halsted—I must say, Mr. Chairman, I do not see the necessity of having this language in the Constitution—to insert it as a provision of the Constitutional law, that after a man has been acquitted, or convicted of a crime and pardoned, he shall not be tried a second time for the same offence. Is it necessary or is it proper to insert such an idea in this Constitution? I prefer the section as it is now drawn, and if I could agree with one principle which appears to be settled by the cases cited, I should prefer the language of the section as drawn.

But I confess I have other reasons why I cannot give my consent to the introduction of any other language than that used in the section. I hope at one time in the history of criminal law and criminal jurisprudence to see another construction in reference to a particular state of things, put upon these words, from what is now considered the true construction—It has always seemed to me, and I have heard as yet no argument which has caused me to waver in my opinion—that the strong ground on which the application, or rather the objection to a second trial in these cases in N. Y., which have been referred to, was not put forth in all its strength. My idea is that this which now seems to be a settled proposition (to which I dissent) that in criminal prosecutions where a case is submitted to a jury and when the jury have the fate of the prisoner in their hands, I have never been able to yield to the idea, that because every man of that jury cannot agree that the disputant is innocent, the Court have a right to discharge the jury. I agree to no such doctrine. I never did and I don't think I ever shall be able to agree to it. It is at variance with the elementary principles of freedom as inculcated in the right of trial by jury. If every man of the jury cannot agree that the party is a guilty man, it is in effect saying we return a verdict of acquittal. It is saying he is not guilty.

From the language accustomed to be used in reference to verdicts,

of jurors, it is understood by jurors that they are called on to pronounce that the defendant is an innocent man. That is not the language of the verdict, and it does not come to pass that if 11 men out of 12, should say we are not prepared to say he is guilty—we are prepared to say he is not guilty, and the 12th man says he is guilty—that man believes he is acting contrary to the dictates of his conscience, because in saying I do not find him guilty, he pronounces him an innocent man.

This is making a vast difficulty, to the furtherance of which I cannot consent. Every lawyer will agree with me that the verdict as rendered as not guilty, does not prove the man innocent. The language is, gentlemen of the jury, how do you find? "Not that he is guilty" That is the finding. We find no evidence sufficient to convict him—or the evidence is not satisfactory that he is a guilty man. And when a jury has been kept out 3 or 4 or 5 hours, it is long enough to manifest that the 12 minds who are to pass on the case, cannot be brought to say he is guilty! Thus it appears evident it is a case of that character upon which no verdict of guilty ought to be rendered.

Only bring to mind the well known maxim, that when there is a doubt, that doubt belongs to the prisoner, and the very fact that the jury argue the case, is conclusive evidence that it is a doubtful case. It is a heresy as to the trial by jury. It often happens that 11 men will say there is no evidence to convict, and 1 man will think there is enough, and this one man may keep the other 11 out for hours. It is a misapprehension of their duties on the part of jurors. I know that in answer to this argument, it will be said, that if 1 man can keep 11 out, 1 man may be secured on the jury who is a friend of the defendant, and prevent his conviction. What sort of an answer is this? It is saying that the people of N. J. are not fit to enjoy the right of trial by jury, because it is possible that 1 man friendly to the prisoner may get on the jury. That answer goes too far. It strikes at the trial by jury altogether. If this is to prevail let us get rid of trial by jury entirely. I go on the principle, that unless we can empanel 12 of your peers, who are satisfied you are not guilty, the State will not ask a conviction, and that is the true doctrine. I protest against the doctrine as held in N. Y. that the Court has a right to discharge the jury, and find 12 other men who will agree. Where is to be the end of it? The State says unless we can satisfy every man's mind on the jury, we don't ask your conviction—the cause is tried—the jury sent out, and 10 men say there is no evidence to convict, what is the plain duty of the other two? Their duty is to say, we cannot ask a conviction against the sense of 10 men. If in such cases the Judge has the right to discharge the jury, where is to be the end? If the 1st jury don't agree, he may go on empanelling a second, a third, or fourth, until the State does find 12 men who will convict. Sir, the doctrine in my mind has always been a heresy, and I never can yield to it. It arises from a misapprehension in the minds of the jurors as to the meaning of their finding. I see no necessity for the amendment.

Mr. Ogden—I think Mr. Chairman it would be more prudent to add these words to give a construction to the section.

Mr. Parker said he found the same provisions in the Constitutions of Kentucky, Missouri, Indiana, Ohio, Mississippi, Illinois, Alabama, Michigan, and Arkansas. He objected to the amendment as it would go to unsettle the meaning of the phraseology.

Mr. Hornblower withdrew his amendment, and the question being put on Mr. Ogden's motion it was lost, ayes 20, nays 22. Mr. R. S. Kennedy moved to strike out all after the word *offences* [G]so as to prohibit entirely the admission to bail, of persons charged with capital offences; [A]and in support of this he cited the case of Carter in Warren County, who he said was now on bail and would be tried in June, but even should he be convicted, he could not be committed until September as the case had been removed to the Supreme Circuit Court, and after conviction he might either come on in September to be sentenced or go to Texas.

Mr. Hornblower said he was glad to see some qualification, and citing the same case, which is familiar to all, hoped it would be so amended that persons charged with capital offences should not be bailed at all.

Mr. Kennedy supported the amendment, and Mr. Parker and Mr. Wurts opposed it, and it was lost.

Sections 11, 12, 13, and 14 passed.

Section 15—Mr. Browning [G]moved to amend so as to restrain the legislature from passing laws to impair vested rights of individuals. [A]I have doubts whether this article should be in this place, or whether it should not be in that part of the Constitution relating to the Legislative branch. To test the sense of the Convention, I propose to insert after the [word] "contracts" the words "or law impairing vested rights." I understand from the Chairman that it already embraces this provision, but I do not so look on it.—There has been a definite construction put on the words *ex post facto* law. Not only by the Courts of the U. S. but by the Courts of the other States, that it only refers to criminal cases. Obligations of contract are considered as referring only to matters of agreement or contract. The Legislature of this State

has legislated in reference to vested rights in a manner improper in its character and generally received with dissatisfaction. For instance a will is made in Pa. and there are 2 subscribing witnesses to it. Our laws required three, consequently it will have the legal effect that where land in N. J. is devised, it will descend to the heir the same as if the testator had died intestate. By the operation of the law real estate is vested in the heir. It is his vested right—his own property. The Legislature of this State has framed laws confirming wills of this kind, and declaring them valid to pass real estate. What is this but taking from A and giving to B? It is a judicial exercise instead of a legislative exercise of power, and if it may be practiced in one instance it may in the other. A man may die in N. Jersey and the land goes to the legal heirs at law. But some persons in the disposition of the estate get up affidavits of the intentions of the testator, or his sanity or something else. Petitions are poured in on the Legislature, and the Legislature passes a law making a writing not legal or valid to take the property from kin and give it to devisees whom they create.

Mr. B. cited a case of an old gentleman in Burlington who was too feeble to make his will, but who gave verbal directions as to the disposition of his property, but the Legislature set these at naught and appointed Commissioners to dispose of his real estate. This, he continued, is what I understand by impairing vested rights—A or B creates C trustee of certain property for particular purposes. By and by the just execution of the trust may seem unjust, and there may seem an equity in giving this property to some other person. The Legislature is petitioned, and they only on *ex parte* statements interfere with and break up the trust and give the property to the persons who desired it. This is characterized in some Legislatures as Retrospective Laws. In N. H., Mississippi and Tennessee that term is used to prevent this species of interference.

We are now laying down a fundamental principle to protect the rights of the people of New Jersey against interferences of an improper character. We have declared that they have the unalienable right of acquiring, possessing, and protecting property. Mr. B. here read the opinion of Judge Patterson in 3d Dallas, 391, on a similar question. I adopt he continued, the term vested rights, to avoid the difficulty here suggested. I think it important, and the previous history of Legislation in New Jersey shows how necessary it is.

Mr. Allen rose to ask by way of explanation whether this would apply to rights vested in corporate bodies, viz. banks, insurance companies, rail road companies and the like, as he doubted the power of

the Legislature to alter any of the features of their charters, unless there was a special clause securing that power to them.

Mr. Hornblower suggested to insert the word *"individual"* which was accepted by Mr. Browning.

Mr. Parker thought it was unnecessary, but would like to hear the opinion of gentlemen versed in the law on this subject.

Mr. Vroom—This is a subject of great importance and I am not prepared to meet it now. I supposed this would come up in the Legislative report, without knowing that it had been introduced in the Bill of Rights. These general provisions are such as we find in all Bills of Rights, and you ought to look well at it before you engraft on the Constitution a provision that the Legislature may not pass a law for the relief of a private individual. I had rather it should be withdrawn and a similar provision be inserted in the report on the legislative branch.

Mr. Browning withdrew the amendment with that understanding, and the section was passed as also section 16.

Section 17.—Mr. Randolph—Does this section correct cases which may arise under the present road law by which private property may be taken for public or private use. It is an exceedingly hard case, not sustained by law, justice, or common sense.

Mr. Parker said, this principle is well known, and is inserted in various Constitutions, or Bills of Rights, in nearly the same words. How far the case submitted by his colleague ought to be provided for in the Bill of Rights, he was not prepared to say. The principles here set forth had their origin in the struggle between the crown and the people, and were concessions granted by the crown, or forced from it by the people. I do not think this a proper place to provide against such objections. It is not appropriate to a Bill of Rights, and therefore was not put in.

Mr. Cassedy moved to insert the word "first," providing that the compensation for private property taken for public use, should be made before the property should be taken.

Mr. Allen.—What would be the effect of this in laying out public roads by the State. No compensation is made for land taken by the State for public roads—established by law.

Mr. Hornblower.—If we undertake to amend this, we shall involve ourselves in difficulty. The question is often asked; what is the meaning of public use? Individuals have questioned the right of the Legislatures to authorize men to appropriate private property at all; contending that the word public use applies only to the general govern-

ment, as for an arsenal, military post or the like, and tho' I am not prepared to say I accede to this, if it was a new question, it is now too late to raise any question on the subject. It has been decided here and elsewhere that government may incorporate companies and give them the privilege of making railroads or canals over private lands by making compensation. The argument is, that it is a public improvement and for public use, and if the government has a right to take the land for their own use, they have a right to take it indirectly. It is settled that the words justify the Legislatures in authorizing corporations to pass over private lands, by paying a just compensation. The alteration proposed would only create doubt and confusion.

Mr. Parker contended that in many cases it would be impossible to make compensation; such as encamping on a man's ground, or cutting his timber to build a bridge.

Mr. Browning. I concur with the mover in his amendment. It is necessary to protect private property. This taking of private property for public use is a stretch of arbitrary power. We had better submit to temporary evils than to allow the legislature to authorize the taking of private property upon the bare promise of compensation. If a man is to give up his land or his house, let him be paid for it first.

The legislature for instance, authorizes a canal to be constructed, and appoints commissioners to assess damages, and these assessments may be appealed from.—This all looks very well on paper, but how does it act? The commissioners are appointed—a landholder is not satisfied with their decision, but the excavation goes on. He appeals, and the case is hung up in one of the courts. The company has abundant means to carry on the lawsuit, and before it is ended, the property is destroyed—the company bankrupt, and where is his remedy?

Mr. Browning again read from Judge Patterson. The Isle of Man, was owned by a company of pilots, and the Government of Great Britain wanted it for public uses, but Parliament with all its boasted promises did not dare to take it. No, sir, they entered into a compromise with the owner, and paid him for it before they used it. This is the proper ground, and affords the only security for private property and private rights, to compel them before taking it to make just compensation.—Practical evils it is true may ensue, but it is better to submit to them than to submit to the invasion of private property.

Mr. Vroom. I have Mr. Chairman, but a few remarks. The gentleman from Middlesex thinks this provision could not be carried out, and cites 3 or 4 cases to support his argument. If this clause in the bill of rights is to receive the construction which it originally received

before it was enlarged, I should go for it, as by the original construction it was confined to public exigencies. That no longer exists, and we all know that the great effect in its application, is in regard to private property taken for what by construction is now termed public use. Now railroads, canals, turnpikes, which can be made to come under the class of public use, ride over our property rough shod, and leave us to look for our compensation where we can get it. Some little inconvenience may arise from adopting this amendment, but great benefits must result. It would strike at the very root of the evil. Every body knows it. Rail Roads, Canals, &c, go where they may please, and on pretence of making compensation they take our property, and where do we stand? The matter is hung up in court, and while the citizen is protecting his rights the company goes on, ploughs up his field and devotes it to their own use. Nay, some have gone further, and I well remember the case where a party was assessed and the company were not satisfied. They took the matter to the Supreme Court to have the assessment resisted, and while there, they went on with the work, refusing to pay him the compensation awarded by the assessors, and to be protected in this from any action which he might take, they, while litigating in our Court, carried it into Chancery and obtained an injunction forbidding the man to go on his own ground, and what is more strange, the high Court of Appeals sustained them. This shows the necessity of protecting the people from the power of corporations. If this is true construction, let it be so. Give them all the latitude you choose, but while you do it, protect the landholders and citizens in their rights.

Mr. Randolph asked what would be the effect of this with reference to streets, roads, &c. in towns and villages. This would place it out of the power to lay out streets or roads, or improve them without first making compensation, and that could not be ascertained until everything had been taken into consideration. It might too have the effect of delaying important and necessary public works, and an obstinate man might compel a company to pay him four times as much as his land was worth.

Mr. Williamson said, he would oppose this, as he thought it should be left to the Legislature to fix the time and manner of making compensation. Private property was protected by law, and if taken without authority, the party was liable in damages.

The amendment of Mr. Cassedy was lost, ayes 19, noes 21.

Mr. J. R. Thomson then offered an additional section, the following: "The person of a debtor shall not without strong presumption

of fraud be continued in imprisonment after delivering up his estate for the benefit of his creditor or creditors in the manner as provided by law." This provision he said was in the Constitution of Kentucky, Ohio, Indiana, Illinois, Missouri, and Mississippi, and he thought it ought to be made a constitutional provision in this state.

Mr. Condit thought the legislature might be trusted to make laws on this subject.

Mr. Randolph said he was in favor of the principle, but doubted the propriety of putting it in the Constitution. The law is so now, and the sense of the people is in favor of it. He thought too that it would array the shop-keepers and others who had opposed the non-imprisonment act, against the Constitution.

Mr. Parker thought this too important to be acted on so suddenly, and without preparation or consideration. He should like to have it printed, that he might examine it. He was in favor of the principle, but not in this place. [G]This was more properly a subject for legislation; and that in the shape proposed, it would be inoperative and ineffectual. It did not make it obligatory upon the legislature to pass laws whereby the debtor could be released. Mr. P. was not unfavorable to the object of the motion. It was already provided for by law.

Mr. J. R. Thomson defended it as a necessary protection of the citizen.

[A]Mr. Jaques objected to leaving the rights of individuals to changing Legislatures, as they might be elected under some new influence which would operate on the law. [G]No one could justly be deprived of his liberty for debt, or for any other cause than crime.

[A]Mr. Ogden was also in favor of having it a provision of the fundamental law of the state. [G]It incorporated in our fundamental law a wholesome principle, now become the policy of New Jersey.

[A]Mr. Field reminded Mr. Thomson that the word *continued* distinctly recognized imprisonment for debt, and suggested its alteration.

[G]Mr. John R. Thomson was very anxious to guard against such a construction, and would therefore make any necessary alteration.

Here, on motion of Mr. Parker, [J]the committee rose, reported progress, and had leave to sit again.

The convention then adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

[A]Mr. Vanarsdale moved that the report on the Judiciary Department be made the order of the day for Wednesday next. He thought it was one of the most important reports that would come before us, and would probably elicit much discussion.

After some discussion as to whether it would be printed in time, or would be taken up before the other reports, the motion was lost.

Mr. Stokes presented a petition from certain colored citizens of the State praying that they may not be excluded by the Constitution, from exercising the right of suffrage—

[J]Which was read, and, on motion of Mr. J. R. Thomson, was ordered to lie on the table.

The convention then resolved itself into committee of the whole, Mr. Haight in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on a Bill of Rights and Privileges.

[A]Mr. J. R. Thomson offered the following as a substitute for the article offered by him this morning: "No person shall be imprisoned for debt unless he shall refuse to deliver up his estate for the benefit of his creditors, or unless there is strong presumption of fraud on the part of the debtor."

Mr. Stokes inquired if fines would be considered as a debt.

Mr. J. R. Thomson: I understand so.

Mr. Stokes: Then I should be in favor of it; as it will prevent imprisonment for militia fines.

Mr. Hornblower should certainly oppose it if it included fines, inflicted as a penalty. Many persons are indicted for robbing hen roosts or for assaults and batteries, and punished by fines—and I cannot consent that they shall be placed on the same footing with an honest but unfortunate debtor. Not long since I had the honor to sit upon the bench in one of the counties of the State and a young man was indicted and tried for the crime of perjury and convicted. And instead of being sent to the State Prison as he should have been the Judge of the Court of oyer and terminer overruled me and imposed upon him a fine of $50, and he immediately applied for his discharge as an Insolvent debtor. I asked the Judges if the Court of Common Pleas would exercise the power of discharging him; and the Sheriff informed me that such was their common practice—I then told him if he discharged him, I should apply to the Grand Jury to have him indicted for an escape.

Mr. Allen did not like the amendment in its present form, as it would leave no power to collect taxes of those who have no property. He held that it was no more than right that those who enjoy the right

of citizens should bear their part in the support of the government, and that whenever a tax was imposed there should be some way to collect it. If you put the principle of non-imprisonment in the Constitution every man has the option of trusting another or not, but it is not so with taxes. Every man is bound by it—and he should go against the amendment unless taxes were excepted.

Mr. J. R. Thomson had no doubt the amendment would be voted against by many persons. He was no lawyer himself, but he understood that a fine was a debt, and if a person is fined he is bound to give up his property to pay it, and what more can he do? He was surprised to hear any gentleman advocate the principle of his being imprisoned. Is this the spirit of the age of which we have heard so much? If so, I have not so understood it.

Mr. Ewing said the question of imprisonment has been long before the people. There has always been a strife between the debtor and the creditor—and when the latter had prevailed it has been found necessary to pass insolvent laws to discharge the former from imprisonment. He thanked the gentleman for presenting the subject in such a way that it might be finally disposed of. The people wish it disposed of, and the objection to the law passed two years ago was not to the *principle*, but that it was retrospective, no matter whether it is a tax or fine—if the person has no property he should not be imprisoned—but if he has property which he will not give up, or is guilty of fraud in any way, he should be.

By former laws the debtor was at the mercy of the creditor, and other Legislatures were compelled to set them free. The subject should not be thus fluctuating, but should be settled.

Mr. R. P. Thompson said:

I presume, Mr. Chairman, that there is no difference of opinion amongst the delegates of this body on the subject of imprisonment for debt, nor do I suppose that any gentleman on this floor would desire to continue that relic of a barbarous age on the statute Book of the State of New Jersey. Such too, is the state of feeling throughout the State, and we do but give full force and effect to the wishes of our constituents, when we engraft on the Constitution the enduring provision, that the unfortunate *honest* debtor who gives up fairly to his creditors all his estates shall not be thrown into prison;—and this sir being the object of my friend from Mercer in the amendment he has offered I shall most cheerfully vote for its adoption; the time has arrived, Mr. Chairman, when the voice of New Jersey should be heard on this subject. Let us not leave Sir to the caprice of legislation, this

liberty of the citizen—let us place it amongst the fundamental provisions of our Constitution,—throw around it for time to come all the protection of the Supreme law, and let us prove to the citizens of other states, that we are not behind them in the spirit of humanity which protects honest poverty from the felon's doom. But sir, while I would protect the debtor and secure to him personal liberty, I would not forget the rights of the creditor—this amendment carefully distinguishes between the *honest*, and the *fraudulent* debtor—and while to the former it offers and secures freedom from personal restraint, to the latter it holds out no hopes; against him who disregards alike the dictates of common honesty and the just demands of an injured creditor, the severest penalties of the Law are left in full force.

It has been said, Mr. Chairman, that this provision is not required because the Legislature can make all necessary Laws on the subject—but sir while we admit this to be true, and know that the Legislature *can* do so, what certainty have we that they *will* do it? I have no want of confidence in the Legislature, but he knows but little of the past who has now to be told that the Legislative bodies sometimes disregard the popular will, and very frequently mistake it—Party zeal or political expediency will occasionally usurp the places that should be only occupied by considerations of public good. I would have it fixed—so permanently engrafted on the Constitution that all should know and feel that New Jersey was not behind the spirit of the age.

But Mr. Chairman it has been objected by the very excellent member from Burlington (Mr. Allen) that he cannot vote for this amendment as it is, because it will prevent the collection of taxes from a large portion of the community. It is true, Mr. Chairman, that by the present law the body may be imprisoned for the non-payment of tax, but sir, I ask honorable gentlemen on this floor to tell me if they know of one county in New Jersey in which that Law is enforced? In my own county it is never enforced, and sir, the Township Committee that would be bold enough to order it, would not be likely to be troubled with a re-election. Why then should the gentleman be unwilling to yield to public opinion and do away with this barbarous practice? I am willing Mr. Chairman to concede the principle that all who enjoy the privileges of a free government should contribute to its support, but sir, necessity knows no Law, and when you have torn from the humble abode of the poor and miserable the last article of their scanty household I am content there to stop, and not Hyena like to pursue the victim with new tortures. It will give me pleasure to vote for the amendment and I hope it may be adopted.

Mr. R. S. Kennedy had no objection to the question if it was understood. There is no question as to the proposition to abolish imprisonment for debt—but he coincided in the views of the chief justice that fines should not be included.

Mr. J. R. Thomson. Why should a man be fined when he has nothing to pay? If he is guilty of fraud, you can imprison—for he is then guilty of another offence.

Mr. Hornblower. I presume there is no difference of opinion on this floor with the gentleman who offered the amendment. The day has gone by forever in New Jersey, when the doctrine of imprisonment for debt in the abstract will be countenanced. There is no fear that the old system will be revived, and he therefore thought the amendment unnecessary, and might lead to difficulties. He did not object to it, that it might operate to discharge criminals,—for by its language it does not apply to criminals but to debtors. If it did he should feel bound to oppose it. What! If a man conceals his property he may be imprisoned, but if he enters my house—becomes a burglar and robs me in darkness of the night he is to be put on a footing with the poor unfortunate debtor! That a person who is convicted of crime, through the influence of his friends or relatives, or by the clemency of the Judges may have his punishment in the State Prison commuted to a fine and then be discharged as an insolvent debtor. The gentleman asked what is the use of a fine? Why it is to keep him in prison till he pays it or is pardoned.

But there is another thing in the article which I cannot understand. Is a man to be imprisoned for an indefinite time, on a mere presumption of fraud? I protest against that. It is against all law. I say he should be convicted. The fraud should be proved and established by the Judgment of a Court.

He thought the whole subject was a matter for legislation, and not for the constitution, and that it would do more hurt there, than good.

Mr. Zabriskie moved to postpone the further consideration of the article as we have scarcely had time to consider it properly. He wished an opportunity to look into the proposition. He would go as far as any man for the principle involved in it.

Mr. Parker suggested to the gentleman from Mercer to withdraw his motion for the present and offer it when the legislative department should be under consideration.

Mr. J. R. Thomson hoped it would be decided now. It has been considerably discussed and he presumed all had made up their minds. It was a simple question—whether we shall or not, abolish imprisonments for debt.

The gentleman from Essex has said, that the object of a fine is to send a person to prison unless he pays it or is pardoned. If it is so it should be altered. Don't impose upon a poor man what it is impossible for him to pay. His friends are few and the pardoning power is uncertain. But how inconsistent is the law if it is so. If a person commits assault and battery, he is imprisoned—but if he is guilty of a crime ten thousand times greater in magnitude—seduction—he is punished by a fine and then discharged as an insolvent debtor.

One word as to the objection that by this article a person is to be imprisoned upon presumption. That is so—but has it not been always so? How is the presumption raised? Generally by oath or affidavit. If a person commits a murder he is arrested upon the oath of some person and remains imprisoned till he is tried.

I hope the subject will not be postponed. We are as able to decide it now as we shall be. We are all tired of these delays. There is too much talking. Our constituents are becoming disgusted with us, and I fear we shall become disgusted with ourselves.

Mr. Zabriskie withdrew his motion to postpone. He was entirely in favor of the principle, but wished to know the effects of the article.

Mr. Halsted was in favor of the principle, and would vote for the article as it stands if the committee thought all the words necessary. But he would suggest that it would be better to declare a simple, distinct and intelligible proposition—such as this: "No person shall be imprisoned for debt, unless upon strong presumption of fraud on the part of the debtor."

I would strike out the other words. We all agree that the fraudulent debtor should not be free from arrest. The law upon the subject now provides that upon proof of either of three propositions either of which shows that the debtor contemplates fraud, he may be arrested. How the presumption of fraud is to be raised must be left to the Legislature. The difficulty is in passing the point of original arrest. We are unwilling to say, no man shall be arrested for debts, for a debtor may be about to remove with his property from the State fraudulently, and under such circumstances, ought to be subject to arrest, and when in prison upon such grounds as the Legislature considers presumptive evidence of fraud, the rest of the section becomes unnecessary because if he has property and refuses to give it up, he must still remain in prison, for then this presumption of fraud still exists, but I shall vote for the section as it stands, if it is thought better to retain the words that I consider unnecessary.

Inasmuch, therefore, as we wish to declare the simple proposition with clearness, and leave the rest to the Legislature, we shall thus have done enough. It is not proper to introduce any language which may be liable to misconstruction. If you say "on refusal to deliver up his property," *how*, or *when*, or *where* shall the refusal be made?

He thought it better to declare that a person may be imprisoned upon "strong presumption" of fraud, but to leave all the details to the Legislature as to how that presumption may be raised.

Mr. Hornblower suggested an amendment to require *proof* of fraud or removal &c.

[G]Mr. Field would have no objection to vote for Mr. Thomson's article, but he could not go so far as to vote for the amendment.

Mr. Hornblower withdrew his amendment.

Mr. Dickerson hoped no clause of this kind would be inserted. The legislature should be left free to use their discretion on this nice point. As for the imprisonment of honest debtors all were opposed to it. But he hoped it would be in the power of the legislature to make severe laws against those men who, committing a crime worse than petty larceny, contract large debts which they have little expectation of paying. The morals of the country are suffering from this cause.

[A]Mr. Pickel hoped the subject would be settled here. There should be no imprisonment for debt, but the details should be left for the Legislature.—He loved the proposition and should willingly vote for it.

Mr. Ogden would repeat that he was in favor of the proposition, and instead of being injurious to creditors, he thought it would be beneficial. The former action of the Legislature has been founded on the petitions of debtors, and if we now establish the proposition that there shall be no imprisonment for debt, they will begin to legislate for the benefit of creditors; as to the objection of the gentleman from Morris, he thought the article would reach fraud in the *contracting* of debts, as well as subsequently.

The article was agreed to.

Mr. Jaques moved to strike out the word *petition* in the article that "the people may petition for redress of grievances," and insert ask or request.—He said the people were the *principal*, and the representatives their *agents*, and therefore *petition* was not the proper word.

Mr. Parsons said *petition* was the word used in addresses to the Legislature for a redress of grievances or anything else.

Not agreed to.

[G]Mr. Jaques moved to insert at the conclusion of the second article this—

"On entering into society men give up none of their rights; they only desist from their exercise, and adopt new modes by which they are better secured."

[A]In support of the amendment he read extracts from Thomas Jefferson, Dr. Channing, and referred to Wayland's political economy. [G]In this country we hold that rights are equal and inalienable. [A]He said it was a solecism that the people, being the source of power—gave up their rights. To whom, or how, can they be given up? If the Convention rejects the amendment, it will be engrafted on other Constitutions and we shall lose the credit of being the first to acknowledge this fundamental principle of our rights.

Mr. Zabriskie should vote against it, because it was an abstract proposition and had nothing to do with the Constitution; [G]and therefore it would only encumber the constitution.

The motion was disagreed to.

[A]Mr. Hornblower said we had gone through this report and adopted 19 allegations and assertions of our rights. I am unwilling to stop there. If the question had been distinctly raised, whether we should have a bill of rights at all, I should have voted against it. We have now arrived at a period when we should discard the lesson which we have learned from our ancestors, who were compelled to ask crowned heads for a bill of rights. What do we want them for? Although I was born in revolutionary times, at the first dawning of my reasoning powers, I imbibed the doctrine that these rights were our own. They are written on our hearts. Why shall we tell ourselves what our rights are, or protect ourselves against ourselves? But there seems to be a prevailing disposition.

Mr. Parker. May I ask what the question is before the Committee?

Mr. Hornblower. I am about to offer an amendment. There is a maxim of the law that the expression of a part excludes all not expressed—*expressio unius, exclusio alterius.* Now this bill of rights don't contain half our rights and he did not want those not expressed to be excluded. If they were all expressed they would be as long as the moral law—or the five books of Moses. He moved therefore to add a saving clause, to the effect that this bill of rights shall not abridge or take away any natural rights which are not here enumerated.

Mr. Zabriskie said—

Mr. Chairman—although I have no objection to the adoption of the article proposed by the Hon. the Chief Justice, I differ essentially from him in his remarks on the subject and the necessity of a bill of rights. He says that the day has gone by when declarations of

rights are necessary to protect the people. That where despotism prevails, such contrivances might be of service. Sir, I look upon them as designed to subserve another and a greater purpose. Despots grant only bills of *privileges*, not declarations of rights. Such is magna charta. *There*, power resides in the despot: *here*, in the people. Although the people may know their rights, to maintain them unimpaired, it is necessary to have them frequently before the mind. In addition to that, Sir, declarations of rights contain a restriction upon legislative action. They exert in this respect a most salutary and conservative purpose. How dark are the evils that unbridled legislation has inflicted upon the community. We are called upon in the exercise of the high and responsible duties that devolve upon us to guard all the avenues by which the people's rights may be invaded. By adopting the declaration of rights, we will circumscribe the action of the legislature within its legitimate and proper sphere, as well as proclaim those great and fundamental truths which lie at the foundation of civil liberty.

Mr. Ten Eyck said as one of the Committee who had made this report he wished to reply a word to some remarks of the gentleman from Essex, although no motion had been made to overthrow the work of the Committee. I believe there is great use in a bill of rights. It is no objection that they were originally forced by the barons of England from their sovereign. Their efforts were the efforts of civil liberty against the power and opposition of tyrants. But if I understand what eminent writers say upon the subject, they say that a bill of rights is more necessary and called for in a republican government, than under a crowned head—that as all power springs from the people, they should declare that the great fundamental doctrines of civil liberty should not be interfered with in any way, but that minor matters should be left with the Legislative.

I should not thus have given my opinions had I not consulted the writers on the subject—and if I mistake not, Chancellor Kent and Judge Story both recommend and enforce this practice.

I however second the motion for the amendment as that will obviate all possible difficulty.

Mr. Browning read a similar clause from the Constitution of the U. S., and that of Alabama. He was in favor of amendment, except so far as the word "natural" may embarrass it. We have been treating of *civil* as well as *natural* rights.

Mr. Parker said our situation is different from the Convention which framed the Constitution of the U. States. We are the representatives of New Jersey—sent here, I was going to say, *as* the people—as their delegates to speak for them. We prescribe rules by which laws shall be made—the manner in which Judges shall be appointed, to administer them, and the Governor to carry them into effect. If man was infallible and not governed by interests and passions and prejudices, and knew what was right we should want no bill of rights. But the fact is not so, and therefore it is necessary—not for the purpose of *establishing* these rights, but as landmarks, and to prevent the Legislature from passing laws to interfere with them. But Congress is a government of delegated powers, and represents the States themselves.

Mr. Ewing coincided with the views of the Chief Justice, and thought if we had a bill of rights we should have the whole of them. He had thought from the first that it was not necessary—but that we should frame a good plain Constitution which the people could understand. We are not making one for a young people or for the aborigines of the country—The people are not ignorant of their rights. They are already secured to them—and he thought if we had none, except that in the old Constitution securing our religious principles, there would have been no difficulty.

He however gave the Committee credit for presenting a good bill, but thought they should be all mentioned, or else adopt the saving clause.

[G]Mr. Hornblower's motion was agreed to.

[A]Mr. Browning called the attention of the Convention to the 7th article—that relating to the trial by Jury. Before our old Constitution was adopted, causes where the value in dispute did not exceed $16, could be tried by a six man jury before justices—and the Constitution declared that "the right of trial by jury should remain inviolate." A subsequent Legislature extended the jurisdiction of six man juries to $25—and the Supreme Court held that it was unconstitutional. The idea of a jury by common law, is of twelve men—and when we speak of a jury, we speak of a twelve man jury, *ex vi termini*. He thought there was a general concurrence in the opinion that it was not worth while to require a jury of twelve men to try causes where the value in dispute was small; and if it was proper to extend the jurisdiction of six man juries, and there was a difficulty in the way, it had better be obviated by the Convention. [G]His object was to authorize the legislature to provide for trying suits for less than $50, by juries of six men or by justices.

A great many substitutes were offered by various gentlemen;

which were discussed in a conversational manner, for a considerable time, [A]between Messrs. Green, Wurts, Ogden, and others. [G]At length a substitute was adopted, offered by Mr. Wurts:

[G]"*Provided*, That the Legislature may authorize the trial of civil suits for sums not exceeding $50 by a jury of six men."

Mr. R. S. Kennedy moved to strike out the words (*in italics*,) the people have a right *"to abolish one form of government and establish another."* He said we had the right when the old Constitution was framed to do it, for we then had a monarchial government and were about changing it—and he held that we had no right to abolish now our republican form of government.

Mr. Schenck said the words were inconsistent with the Constitution of the U. S., which guarantees to every State a republican form of government. We have that now, and therefore have no right to abolish it.

Agreed to.

[G]The committee then rose and reported the Bill as amended; [J]and were discharged from the further consideration of the same.

On motion of Mr. Ewing, it was

Ordered, That the report and amendments do lie on the table, and one hundred and twenty copies thereof be printed.

The convention adjourned till to-morrow morning, at nine o'clock.

[J]FRIDAY MORNING, 31st May.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Hall.

[A]Mr. Jaques then offered a resolution that it be referred to a special committee of five, to inquire into and report upon the expediency of establishing a Court of reconciliation, similar to that adopted in Denmark, and the Republic of Mexico.

Denmark, he said, in 1842 reformed her Judiciary system by the establishment of a new Court called the Court of Reconciliation, to whose examination all causes must be first submitted before they can be entered upon the docket of her regular Courts of Law. The Court

is composed of two Judges, chosen by the people in each township. If they are unable to reconcile the parties, the judges give a certificate to that effect. Without such certificate, no other court will entertain the suit. Their expenses are paid by the parties. So satisfactory have been its decisions, that not one in ten have had recourse to the regular Courts of Law.

Mexico, when she organized her present Government, as a republic, adopted the following as her Judiciary system. Her justices of the Peace were elected by the people. These have the decision of all causes under ten dollars. All causes over $10, and under $100 are adjudicated as follows. The parties each choose one good man as an arbitrator, who, with the justice of the peace form the court, in which the opinion of the majority decides, and from their decision there is no appeal. In all causes where the amount litigated exceeds $100, the same course must be pursued with the right of appeal to another court, termed the Court of Corrigio, or Court for the Correction of Errors. No costs of court are charged until an appeal is made.

He said he had delayed this for some time in the hope of receiving some documents from the Court of Mexico, but as they have not come to hand, he must propose it without them. This law, he continued, is suited to the genius and character of this people, and if such a court is established, I have no doubt that it will be productive of great good, and result in the happiest consequences.

Mr. Hornblower. I have the most decided objections, Mr. Chairman, to the organization of such a court, and I do not wonder it has been introduced before the British Parliament. My only wonder is that it did not succeed, for of all despotic, tyrannical laws, this is the most despotic. It is in fact a court to decide whether a man shall have the benefit of the laws of his country, or whether he shall have his rights. Suppose the contest to be between the poor man and the rich man—the peasant and the nobleman. He cannot appeal to the laws, but must first go to this Court of Reconciliation and they may propose terms to which he cannot, without injury to himself, accede to. No other court can entertain his rights without the consent of this court. It is in fact the first and final court of decision. He has no writ of error—no appeal to look to. No, Sir, it is a plan to nip law-suits in the bud—to crush the rights of individuals. What would be the effect of such a court in times of high political excitement? The judges might be fair and impartial men, or they might be political party ones; and with all the influences which might be brought to bear on them, these are the men who are to say in the first place whether you shall have the shield of

the law thrown around your rights.

Mr. Jaques. The Chief Justice, Mr. Chairman, does not understand the proposition I see very clearly.—This court has no other powers or duties than to endeavor to effect a reconciliation between the contending parties. They have no authority to say their decision is binding. If either party is dissatisfied with their decision, they give a certificate that they cannot reconcile them, and then the courts are open to them, but not without such a certificate. It is a preparatory step to prevent litigation—to reconcile parties and to prevent disputes. It will prevent the commencement of suits unnecessarily and in haste and passion, which otherwise would have been commenced. Perhaps it would take away a little business from the Judges and gentlemen of the bar, but that has not entered into my consideration at all. I do not care whom it may affect. I consult only the good of my constituents—the benefit of the whole community.

Mr. Naar said he had lived in Denmark where this law was in operation with the most salutary effects, and he could assure the members that so far from injuring the business of Judges or Lawyers, that class of the community were all wealthy there.

After some few further remarks of opposition from Mr. Hornblower, the resolution was]read, adopted, and

Messrs. Jaques, Naar, Edsall, Westervelt, and R. S. Kennedy were appointed said committee.

[Mr. Hornblower moved to go into committee of the whole on the report on the Executive Department.

Mr. R. P. Thompson opposed the motion, on account of the great delay caused by this course and the wide and improper range of debate taken in the committee.

Mr. Ewing advocated the motion, until called to order by Mr. Wurts on the ground that the motion was not debatable.

Mr. Hornblower withdrew his motion in order to give Mr. T. an opportunity to move to rescind the rule for considering all reports in committee. Mr. Thompson made that motion.

Messrs. Hornblower, Parker, Ewing and Condit, opposed the motion.

Messrs. Ryerson, Zabriskie, R. P. Thompson and Ogden advocated it; and it was disagreed to 24 to 29.

The convention then, on Mr. Hornblower's motion,]resolved itself into committee of the whole, Mr. Stratton in the chair, upon the consideration of the report of the Committee on the Executive Department [see Index for text]. [The 1st section was passed.

Section 2d. Mr. Hornblower moved to amend by striking out all in the first line after the word *State*, and all of the second line, which was adopted.

Mr. R. P. Thompson moved to amend the 5th line by striking out the words *"next after the time,"* but withdrew it without taking any motion on it.

Mr. Hornblower moved to further amend the section by adding these words at the close, "when a Governor is to be elected by the people, such election shall be held at the same time and places, where the people now vote for the members of the State Legislature," which, after some slight discussion as to the wording of the amendment, was adopted.

Mr. Parker moved to insert the word *immediately* in the 9th line after the words *shall be*, which being modified to *"forthwith,"* was agreed to.

Section 3d. Mr. Hornblower moved to fill the blank with the 3d. Tuesday in January. This created some discussion as to the effect it would have on the prerogative of the newly elected governor, and upon the commencement and end of his term of office, and several amendments referring only to the verbiage, were proposed, but no action had on them. This amendment was lost, and a motion to insert *second Tuesday*, was agreed to.

Mr. Ryerson moved to strike out the word *his* in reference to the election of governor, and insert *such* (election) by the people, and after some debate, a motion by Mr. Clark to postpone the section in order that it might be more fully considered was carried.

Section 4—Mr. Mickle moved to add at the close thereof, "Provided no person except a native born citizen or one who shall be a citizen of the U. S., at the time of the adoption of this Constitution shall be eligible to the office of Governor," which was lost—ayes 14, noes not counted.

Mr. Gilchrist moved to strike out the word resident and insert inhabitant, lost, ayes 10, noes 22.

Section 5 passed.

Section 6 passed.

Section 7—Mr. Ryerson. Mr. Chairman, as a member of the Committee who presented the report on which we are now acting, I move to amend it by striking out in the 5th and 7th lines the word majority and insert *two-thirds*.

Mr. Condit.—Will not the gentleman be content with three-fifths? I ask in a spirit of conciliation and compromise.

Mr. R. S. Kennedy—Mr. Chairman, I hope nothing will be brought forward in this Committee which will have a tendency to endanger the adoption of this Constitution, and if there is any single provision which will raise opposition to it, it will be the creating the old [Royal Governor's?] veto power. I have never, sir in N. J. heard any complaint uttered that the Governor had not the veto power, and if you insert it here, it will be drawing a party line, and will, in my opinion, be dealing a death blow to the Constitution. I sir for one, would never vote for the adoption of this Constitution with this feature in it. I look upon it as an aristocratic feature which was inserted in the Constitution when our fathers had a feeling of fear to entrust the people with too much power. I sir, have no such feeling. By inserting this provision, you say the people cannot be trusted, but one man may. If the members of a Legislature do wrong the people will turn them out and elect new ones in another year. But here you have a man who is to be elected for 3 years, and if he should happen to be an obstinate and self-willed man, he may for 3 years, keep the people from having a law which they require for their interest or security. It is not necessary that this should be engrafted in the Constitution. It will bring it in danger and I hope sir this feature, so anti-democratic, will not be adopted. I hope it will be withdrawn.

Mr. Ryerson. Mr. Chairman, I do not feel at liberty to withdraw it. I feel bound by considerations of duty to express my opinion upon it, and if a gentleman wishes to make any amendment, I hope he may make them without having the imputation cast on him that he is doing so for party purposes. Sir, I have banished all party feelings and considerations. I have given no vote in this Convention under the influence of such feelings, and I dislike to hear a gentleman get up and say that if such and such amendments are made, he will not vote for the Constitution. I am prepared, sir, to submit to the will of the majority, and whatever they may agree upon, I will sign, and if necessary, sir, will advocate it before the people.

Mr. Kennedy disclaimed imputing any party motives to the gentleman. He comes here he says prepared to submit to a majority. Sir I am not prepared to submit to the majority in the framing of this Constitution, unless it comes within my views of what is right, and I shall reserve to myself the right and privilege of voting for it, or not as I see fit, and if I cannot get it as I consider right, I certainly shall not vote for it.

Mr. Condit. The gentleman Sir must not speak for me. My principles have been settled and known these 50 or 60 years. I never have

changed my mind on the subject of political power nor do I think that the party with whom I act, have ever changed on this subject. I think the veto power may be given with safety but not to go to the extent of requiring a 2 3rd vote to nullify it. I think that 3 5ths would be better than a bare majority.

Mr. Child. I have Mr. Chairman no objections to the section as it is reported. It would have a tendency to prevent hasty and inconsiderate legislation.—From all past experience I question whether after this power has been exercised the vote has not always been the same as before. It amounts to no more in fact than a loss of time. But Sir, I cannot vote for this amendment, by which we will put it in the power of one man to defeat the express wishes of a majority. I cannot consent to say, that the people may be made to wait for four years, before they can obtain a law demanded by a majority, for such in fact might be the effect of the amendment.

Mr. Ryerson. Mr. Chairman, I accept the amendment of the gentleman from Essex in a spirit of conciliation, and am willing it should be 3-5 instead of 2-3.

Mr. Zabriskie. I am glad to see the amendment accepted in this conciliatory manner. It is clearly demonstrative that there is nothing of a party spirit in this Convention, and that this is not made a party question.

Mr. Naar. Mr. Chairman I have but a few remarks to offer on this question. I look upon it as a power of the people, to restrain any hasty, injudicious, and perhaps hasty legislation. The Governor is elected by a majority of the people, and he must be considered as a representative of that majority. The legislature may also be considered in the same light, but the legislature, consisting as it does of a number of persons, may transcend its powers, and go beyond the will of the people. Then, in such a case, the Governor stands as the conservative power of the people united in one man, to restrain the usurpations of the legislature. No community of free people ought to be afraid to entrust their liberties in the hands of the man chosen by themselves.

But the gentleman says the Governor is chosen for 3 years, and may keep from the people for all that time, laws which they desire. That, Sir, amounts to nothing, for the Legislature is chosen annually, and if the Governor, in the exercise of his veto power, should go against the express will of a majority of the people, they would arise in their might and majesty, and send such a majority as would nullify his acts. I think, sir, it would be well for the welfare and prosperity of New Jersey, if her Governor is vested with the veto power. We

should have no more straightening of crooked lines—no heart-burnings, or any thing to cause the ill will we have seen, if we had a responsible man to represent the people. I shall vote for inserting the veto power in this Constitution, and concur in the amendment requiring a vote of 3-5 to operate against it.

Mr. R. P. Thompson. I would merely remark, sir, that in the states of Maine, New Hampshire, N. York, Pennsylvania, Louisiana, Mississippi, and Illinois, a vote of two-thirds is requisite, and in Connecticut, Indiana, Missouri and Arkansas, a majority only is required. I think sir that the proposition here to adopt three-fifths, will be the means of conciliation and productive of harmony in this body, and it is a source of great congratulation, to see a gentleman like my venerable and esteemed friend from Essex come forward in the spirit he has manifested on this occasion. If we make it a majority vote, in the Assembly, 30 members will be required. If a two-third vote, 38 and a fraction, and if a three-fifth vote, 35 and a small fraction. I hope it will be adopted.

Mr. Ewing. Mr. Chairman, I can say with sincerity I have no political feeling on this subject. I have considered it well and deliberately, and agree with the gentleman from Morris in preferring the bill as it is now reported. It will give the Legislature time for deliberation and that is all that is really wanted. I am however in the spirit of conciliation which has been manifested willing to go with the gentleman in the proposition for a three-fifth vote.

Mr. Vroom. This Mr. Chairman is truly an important subject, and one on which I supposed when it came before the Committee there would be differences of opinion, and I did desire before the question should be taken on it, to submit some views. Now however such is not my purpose, and I rise only to say that with the feeling now existing in this Convention, I shall desist. There seems to be a spirit of conciliation now abroad, and if a debate is commenced on this subject, it might lead to something which would excite a feeling among the members. I regretted sir to hear the member from Warren say that this was a party question. It is not so. It is an important question in the formation of government, the balancing of the different powers. I am glad that the motion has been made by the gentleman from Essex. I should perhaps have preferred the ancient veto adopted by the framers of the Constitution of the U. S. as a compromise when there existed a strong feeling to make the veto power too strong. Perhaps it may be better received as it is, as it is the first time it has been tried in New Jersey. I hope the question may be taken without debate and that the

amendment will be concurred in.

[6]Mr. Vroom began by expressing his gratification at the good feeling and conciliatory spirit manifested; and then adverting to the argument that we had experienced no evil in our state legislation from the want of a veto power, said it was true that our rights may not have been seriously broken in upon, and we need to give thanks to a superintending Providence, that we have been preserved in our little, frail and unsafe bark, from all storms. It was, however, to be ascribed, not to the goodness of our craft, but to the good sense of the people and chiefly to an overruling Providence.

It had been objected, too, and by his valued colleague, that we should by this amendment give to the executive a portion of legislative power and thus destroy the distinction that should be carefully preserved between them. But the veto power was not strictly a legislative power.—It was not the power to do an act, but to prevent its being done. It was not, to use the simile of the gentleman from Mercer, (Mr. Field) it was not the sword, to shed blood, but simply the helmet of defence. If it be a one man power, it is peculiarly the negating power of the people themselves. It is not a power to save the people from themselves; but it is the means of saving the people from one set of their representatives by another set. The Governor is a representative of the people, and the legislature another body of representatives; and why may not the people say against one set of representatives swayed by passion, we will delegate a little power to the man who represents us. It is not taking power from the people's hands. It is retaining it. The power to make laws by representatives, is a delegated power, a restricted power; and we are about to restrict it within safer limits.—The members of the two houses are not representatives of the whole people; the Governor is. He is the sole representative of the whole state. Is it unsafe to commit so small a power to his hands?

Who is the peculiar representative of the whole people? Surely the Governor. But he is elected to execute the laws, and the question is, whether we shall give him the power to negate the laws, or retard in any way, their enactment. That is the question. As to the argument that this power is of aristocratic or regal origin; that is not of any practical importance here. Reference is made too, to the constitution of the United States. Its principal value is to save the small states.

In our legislature, the members represent counties and sectional interests.—They are sectional representatives—and in practice it turns out so—and not of the whole mass of the people. In legislating, various interests enter. Laws may be passed, by sectional influences. One end

of the state may exert its influence against the other end; and both may unite against the middle. Private and personal influences may be brought to bear to accomplish particular objects. How many laws have been passed, of the very worst species of legislation, by such influences. I will put it to this convention and to their constituents and my constituents; and they will tell me that such laws have done most injury to the state at large.—This shows the need of this veto power; as the great preservative principle of the interests of the whole. And sir, when laws have been corruptly passed there is often no redress. Some may be and some may not be repealed the next year. If all could be repealed the danger would not be so great. But we are told here that certain laws convey vested rights, and the judges will say that such laws cannot be touched. Such are the laws establishing corporations—sometimes conveying to them great exclusive privileges; and that something more disastrous to the public welfare, has not happened from such laws, than has happened, is passing strange. We have been greatly protected by Providence, in not having our state now involved in inextricable embarrassments by such laws. A single one would do more harm than 20 vetoes. The gentleman from Essex objects to the veto because it puts an impediment in the way of legislation. And I would put an impediment in the way of such legislation; but I would not give the veto power which would stop it absolutely.

If the vetoed law were a very proper one, certainly it might get a vote of three-fifths of the legislature; and if it were a doubtful law, it might be as well that it should not be passed. Has any law been passed in the last 20 years, of such importance that if it had not passed, the state would have been worse? What is one year in the history of a state, in regard to any law? But the gentleman further said that a Governor may retard legislation for three years, especially if an obstinate or violent party man. I grant that this would be a small evil; but how much smaller than the enactment of a disastrous law? That may be irreclaimable; but the other evil may be righted in time—either by the people's sending an increased number of representatives in favor of the act, or by the expiration of the Governor's term. And in the mean time their rights and privileges all remain. None of them are gone.

I would prefer to have this power as it is in the constitution of the U. States; but I am not so tenacious of that as not to come into the compromise offered by the gentleman from Essex (Mr. Condit). But when we are distributing the powers of government and guarding against hasty legislation, we may look to that constitution as a safe

guide. It was adopted with great consideration. Although it was just after our fore-fathers had broken the bondage of the king of England, yet they acted with great sobriety, when they might have run to the other extreme. James Madison, the venerable James Madison was in favor of this veto power; and he was no aristocrat. He proposed to require that all laws should receive the assent of the Judges of the Supreme Court as well as the President: and unless they should approve, then that bill must receive the votes of two-thirds of each house. The Judges of the Supreme Court were stricken out, and three fourths required to pass the bill. This was afterwards brought down to two thirds. I will not discuss whether the provision has done good or evil: but when a few years shall have rolled onward,—if ever we should get out of party strife, we and our children will bless the framers of the constitution for that safeguard of our rights. Our danger is not in the Executive. The abuse of the veto power will always be temporary. It will not, except for a short time, take away our rights—or our hopes, I had better say. But the great danger lies in the legislative branch. It is suggested to give Senators a three years' term, as some check on the other house; and I am glad to find that it is received with general favor. But why will gentlemen favor this check upon the people's representatives, if they mean to carry out their sweeping doctrines? I might retaliate upon them and say strike out that provision. Nay, what use of the Senate at all? But gentlemen will say, the object is to save the people not from themselves but from the other branch.—Well then, the object of the veto is to save the people from both branches. I hope we shall adopt it, and then we shall have made our constitution as near right as could be expected.

As to the power given in the report, it is very doubtful whether it would have any effect. Suppose a bill returned; the same majority may pass it, as before. Gentlemen may say that the governor's reasons will have great weight and influence. And I was amused at the manner in which gentlemen theorized on the subject. They think the governor will be very calm, and the legislature all very calm. I think different consequences will ensue. Let the legislature, under some strong excitement, pass a dangerous law—a party law—and let it be returned with objections. Will the legislature submit calmly to lecture from the governor. Not so. More probably they will say to him we are as wise as you, and we don't mean to be dictated to by you. Such a veto power, would be more likely to excite feeling, than the old three fourths veto. Then the legislature will know that there is a power in the governor not easily overcome. They will look at the matter seriously. Some, perhaps, who

opposed the law may now advocate it; but I hardly expect that. The effect will, generally, be to postpone the subject for a year; and therefore I approve it, as a great conservative power. I know we have got along without it; but where is the prudence of walking in the narrow line of danger, because a kind Providence has preserved us from danger so far?

[A]Mr. R. S. Kennedy. This proposition for a three-fifths vote does not conciliate me at all, sir. The gentleman says it is balancing the different powers, but it seems to me it is throwing all the power into one scale. It is giving the Governor legislative power, it is in effect giving him sovereign power over the people and the Legislature. The conduct of Gov. Porter [David Rittenhouse Porter, first governor of Pennsylvania (1839-1845) under its constitution of 1838] in the exercise of the veto power shows that a Governor may be tyrannical and go in opposition to the well known wishes of the people, and they cannot help themselves until his time is out. Suppose some special object is demanded by the people. The Governor says to them you can't have it unless you have more than a majority. No sir, it is in fact defeating the wishes of the people. I consider this one of the most anti-democratic measures ever attempted.

Mr. Marsh moved a postponement, as it was a most important subject and required mature deliberation.

Motion to postpone not agreed to.

Mr. Schenck—Mr. Chairman, I am as desirous as any one to cherish no feeling that should not attach to me as an American citizen and a Jerseyman. But that we are to be told that the only way to preserve harmony and conciliation in this Convention is by avoiding the expression of our opinions does not meet my views. It is a fair question for discussion, and I hope it will be debated. We are here acting in behalf of the sovereign power of the people of New Jersey, and the question is, how shall that power be divided? which the people in their primary capacity cannot exercise. The people cannot assemble in a body and make laws, but it is thought proper to place that power in the hands of their representatives. Now the question arises, how will you divide these powers consistently with the public good—in such a manner as shall procure the greatest good for the greatest number. We divide the government into three parts—the Legislative, Executive and Judicial. The people confer on their representatives the power to make laws.

A committee has been appointed here who have reported certain limitations within which the representatives may act in their Legislative capacity. Now we are about to fix the limits within which the

executive may act, and in order that they may act in harmony, the question is how far these powers shall be divided. We are told by gentlemen that this power is inserted in the Constitutions of many of the States, and it was deemed necessary that such a power should be conferred on the President of the U. S. It is not necessary Sir to go into the enquiry how far the powers of a Governor and the President of the U. S. are analogous and I will not stop to make that enquiry here. What Sir has been the result in this State for sixty years where we have had no such power. If a Legislature goes contrary to the will of the people they are not sent back again. If the people disapprove of their action, others are sent to take their places. As we have the experience of a half a century, proving the salutary existence of this power, I see no reason to change it. I see no reason Sir why a Governor should be clothed with the power to resist the very laws which he is elected to carry out. I do not like the idea which has been expressed that there is too much talking here. Look abroad on the world's history Sir, and where do you find the most talking and where will you find silence. Just in the proportion as national liberty exists among the people, just in that proportion you will find liberty of speech, and where is that more necessary than where a government is based on public opinion. I desire to know, and to show what limits we shall prescribe in which each department of our government is to move.

Mr. Hornblower. It is necessary for me, Mr. Chairman, to give my views on this subject, as there exists a deep interest on this subject not only here but out of this house. This is a political question —intimately connected with, and entering into all discussions of opinions on the subjects of civil and political government. Though it is a political, it is not a party question. It is a question on which both political parties differ, and the vote which I shall give will afford another indication that there is no party question in the sense it has been alluded to here. It may seem strange, Mr. Chairman, that I should oppose the veto power, but I shall do so. If the power of the Governor is confined to mere nominations for office, I am opposed to giving him a power by which he can interpose his veto perhaps for their gains and with success, and thus gratify any ambitious views he may have by enlisting the co-operation of the Legislature. Sir, this power is borrowed from a despotic government. It is borrowed from the country from which we are descended, and if I could be satisfied that this power, both in the general and state governments, was a dead letter, I should have no objections to giving it. But, sir, it has grown into a political engine by which political agitation is carried on from the

Executive down to the most distant department of the government.

I have no reason to believe that the Governor will always be the most pure, the most intelligent, and the most patriotic. The office will not be of sufficient importance to make it desirable for the best man to accept of it. I want it, sir, an office which may be filled by our plain honest farmers—and an office on which I am not disposed to hang the trappings of royalty or the symbols of despotic power. I want the Governor to be a plain sound man, who on revising a law will give his opinions on it, and I want those reasons put on record. This will give the community and the Legislature time to reflect, and in the sober second thought to say whether or not it shall become a law. Why not at once, if you desire to prevent hasty legislation, say that no bill shall become a law unless it receives the assent of 3-5ths. This is only another way of saying that all legislation may be defeated by less than three-fifths. Mr. Chairman, I will vote for the section as it is, though I know in doing so I shall differ with those in whom I have the highest confidence, and for whom I have the warmest esteem.

Mr. Parsons. I was at first in favor of the majority principle, and am so still, but in consequence of the gentleman from Sussex agreeing to accept the three-fifth rule, I am willing to go for that by way of conciliation, but on no other ground. Still I should prefer the majority principle.

Mr. Child. Of late years the exercise of the veto power has been very frequent, and the people are divided as to the propriety of granting that power at all.—I have always considered the veto power as valuable, but only a qualified veto, and it seems to me the difference of opinion may be best reconciled by the adoption of the section as it now is. The probability is that very great good will result from it. It will give time for reflection. Ten days will elapse and then the matter is considered a second time. Members will have time to learn the opinions of their constituents, and I have no hesitation in saying that if the veto power had been in operation last year, much benefit would have been derived. I fear that if we adopt the two-third or three-fifth principle, the Constitution will meet with violent opposition on this very ground; and for this reason I think we had better go no further than to grant the Governor a qualified veto power. No harm can result from it, and much good may come.

Mr. Condit. I have expressed myself in favor of the three-fifth principle, and I think it useful, and from which little danger will spring. According to the old Constitution the Governor is the presiding officer of Council, and he would have more influence as such than

a Governor now with the veto power of three-fifths to control it. This is especially the case with a Governor who should be very popular. His influence with the Legislature would be greater, because he is as it were a member. Now he will not be, and I think myself that a qualified veto amounts to nothing. When men have discussed a question and settled their minds, they will not be likely to suffer themselves to be disturbed by the opinions of a man who will not I fear stand so much elevated above the masses as heretofore. That there is hasty legislation, and that the veto power ought to be interposed, I have no doubt; and although in some instances [it] be employed against the interests of the people, I think it would rarely be exercised. In all probability it would not be exercised as often as it ought to be. I would rather see so wholesome a power granted, than to have no power at all to restrain hasty and injudicious legislation.

The time has been when there was a heavy pressure on the Legislature, which might have resulted in saddling this state with a heavy debt, and if that had passed, should we not have been glad to have had the veto power. If a law is unimportant, and such as on its face ought to satisfy any reasonable man, a vote of three-fifths could always be obtained to secure its passage.

Mr. Clark. This, Mr. Chairman, is a new feature in our constitution and is one which as reported, would I think be entertained by this Convention and by the people. With the exception of the gross case [a bill to involve the state in debt] which has been alluded to, but from which no real danger was to be apprehended, I ask where in the history of our Legislature has any event occurred which has called for the interposition of executive power? Here sir we are framing a constitution which purports to state in one of its provisions, that all the various powers of government is to be left a distinct and individual feature. Is there not great security in the measure proposed by the committee. Suppose, sir, a Law is passed by both Houses and is sent to the Governor. He objects to it, and he gives the reasons which induce him to refrain from signing it. We must presume the Governor to be a respectable man. He may not be a Lawyer, and I don't think the Governor ever will be a Lawyer again. I mean a practicing Lawyer, for the office will not be worth the acceptance of a man with a good practice. He will be a plain honest respectable man. It will be the pride and strife of both parties to elect such a man—the most distinguished they can induce to serve. Will not the reasons of such a man be entertained and considered. The Legislature will pause. The action of the bill is suspended. It is reconsidered, and do you think sir that the reasons

of the Governor will not be well considered and weighed and debated. Is it not true though the executive is no part of the Legislative Department, you have made him such, and his reasons are heard in both Houses. Is not this a new feature in our Government. If his reasons are good, such as meet the views of the people of the State, no party will dare to go against them.

Again. By the Report of the Committee on the Legislative Department, there is to be a new construction of the Senate, and the members are to be elected for three years, and when the people know that they are to elect a man for three years, they will exercise more deliberation in their choice than in electing a man for one year, and the soundest and best men will be sent there. Is this no security against hasty legislation? I think it is. I think it may be clearly shown as an historical fact, that when this provision was introduced in the Constitution of the U. S. we had just emerged from a monarchy, and many features in the form of government were dear to the people. But why does it exist in England? Why, to protect the kingly prerogative, and for no other reason under Heaven; because the king is invested with a prerogative; he is at the head of the State and the Church, and he can declare war, and yet he has never exercised this power except where his prerogative has been infringed on by Parliament. Where is the danger of interfering with the prerogative of the governor? What has he but the power of nominations to office, and some military appointments, which I consider a mere shadow of power and nothing more. I don't consider this provision necessary. I am satisfied that in adopting it you will present an issue to the people of New Jersey, and I fear the consequences. We wish this Constitution may be adopted—then why endanger it by inserting such a provision as will distract the people and I fear defeat it? If the subject were to lay over for the consideration of the people a year, the consequences might not be so much to be apprehended; but in the short time now allowed for its discussion, it will be agitated in every possible way, and political parties will be called on to rally for or against it.

Mr. Field said—

Mr. Chairman, there is no member of the Committee who would be more unwilling than myself to protract discussion unnecessarily, and yet I suspect the more we talk about this matter the better will be the feeling that will be found to prevail, and the more manifest will it become that this really is not, what gentlemen seem to apprehend it to be, a party question. It has been made a matter of complaint that too much time has already been consumed in discussing the various

subjects which have presented themselves for our consideration; but if in this respect we have erred, let it not be forgotten that there is an opposite extreme into which we may run, another and a much more serious error into which we are liable to fall—and I concur in the opinion expressed by my friend from Somerset (Mr. Schenck) that this is a question of too much importance to be disposed of in a summary way, or decided without deliberation and debate. At all events it is one upon which I am not willing to give a silent vote or to speak in a smothered voice.

I know of nothing more painful than to be compelled to differ from friends whom we love and whose opinions we are accustomed to revere, and yet upon this occasion I shall feel constrained to give a vote which I know is not in accordance with the views of those with whom upon most subjects I am happy to agree. Mr. Chairman, I am not afraid to avow it, I profess to be an advocate of the veto power. I am one of those who believe that the Governor of New Jersey should be clothed with this power. I know that this is not a popular opinion, and it is possible that if this provision is engrafted on the Constitution, it may be an easy matter to awaken hostility against it. But that consideration does not trouble me. If it is right I am not afraid to vote against it, and if I believed it to be wrong, I know of no consideration that would induce me to give it my support.

If those who address the Committee were to indulge in elaborate arguments in favor of their opinions upon the various propositions which are submitted, we should not be able to complete our labors within the time which has been allotted to us. All that seems to be practicable therefore, and all that I now propose to do, is to indicate with much brevity and in a very general way, the reasons upon which I mean to give my vote in favor of the amendment of the gentleman from Sussex.

In the first place then I am in favor of the veto, because it is strictly a conservative power. As such I have always regarded it with a favorable eye. In early life when I read with delight the pages of the Federalist, I imbibed the opinion that it was a salutary feature in our Constitution. I have ever deemed the arguments that were urged in its favor by Hamilton and Madison and Jay as conclusive and unanswerable. Among its advocates are to be found some of the best and wisest of those who framed the Constitution of the United States, men whose opinions I have always been taught to respect. It may not be altogether in keeping with the spirit of the age. It may be opposed to movement, to progress. It is hostile to change. Its tendency is to keep

things as they are. But what is the greatest evils to which we are exposed? Is it not hasty and indiscreet legislation? All seem to acknowledge this, all lament it. With a view then of correcting this evil to some extent I would give the veto power.

By giving to the Executive a qualified veto you do not enable him to originate any measure, to propose any law. It is not an active power. It is negative in its character, and preventive in its action. True it may put it in the power of the Governor to defeat for a time a good law. But it may be better that ninety and nine good laws should be defeated, than that one bad one should go into operation. When a good law is arrested by the veto the evil is not irreparable.

The vessel of state may be delayed in its course but it is [in] no danger. At all events, the people have the power to right themselves. But when a bad law is enacted, who can calculate the evils that may flow from it? The mischief that it does may be beyond the reach of any remedy. It may inflict upon the body politic an incurable disease, an irremediable wound. The obnoxious law may indeed be repealed, but this will be a poor consolation to those who, in the meantime, have suffered beneath its cruel and oppressive action.

Again, Mr. Chairman, I am in favor of the veto, because it tends to strengthen the hands of the Executive. The Executive is the weaker power in the State, from whose encroachments there is generally little to fear. It is too dependent upon popular support, too much an object of popular jealousy to be in itself very formidable. The great danger to which we are exposed is from the tyranny of a majority of the Legislature. It is this branch of the government which threatens to swallow up all the rest—which is perpetually invading the other departments—and in whose hand power is constantly accumulating. It is here we should put the check and apply the curb. But I shall be asked if I am not afraid of Executive usurpation, and if this veto power has not been abused. Yes, sir, I know it has been, and I have seen the whole country almost convulsed by it, and writhing beneath its terrible lash [undoubtedly referring to President Jackson]. But even then, I would not have been willing to see this power stricken out of the Constitution of the United States. It is dangerous, and illogical too, to reason against the existence of any power from the occasional abuse of it. If this mode of reasoning prevail, we must strip the Executive of all his powers. Where is the power that has not been abused? Has not the appointing power been abused? Has not the removing power been most grossly, shamelessly abused? And yet who proposes to do away with them entirely?

Besides, sir, in reference to the abuse of Executive power in this country, we have, I expect, seen the worst. We know, for we have felt, the full extent of the danger to which we are exposed from this quarter. We have seen (I hope I shall say nothing offensive) a man of iron will carried into the executive chair upon the swollen tide of an overwhelming popular majority, doing whatever "man dare do"—never shrinking from responsibility—never calculating consequences—and wielding with the most tremendous effect this dreaded veto power. And yet sir, we are safe. We have survived the shock. Our liberties, our free institutions remain, and we now repose under their protection as securely and as happily as we did before the storm burst upon us. But, sir, we have never seen, and I trust we never shall see, a majority of the representatives of the people, either in the State or National Legislature, bold and corrupt, daring and unprincipled, with no power to check of control them, trampling under foot the law and the Constitution and aiming to subvert the liberties of the country. Should we live to see that, we may be found calling upon the rocks and the mountains of a veto to cover us in vain. Then shall we lament the extinction of that power which might have been interposed for our protection.

It has been apprehended that this might be made a party question. But it is not so, and I rejoice that among my political friends I am not permitted to stand alone, but that I am countenanced and sustained by the intelligent and respected gentleman from Essex, (Mr. Condit). Why should it be a party question? Is there any thing in the principles of that party to which I am attached which should lead them to withhold from the Executive a power so conservative in its character?—On the contrary, I believe that those principles if suffered to produce their legitimate influence upon the minds of gentlemen by whom they are embraced, would lead them to confer it. It is owing to causes extrinsic in their nature, and to which it is unnecessary that I should further allude, that so many among us have been led to doubt the propriety of clothing the Executive with such a power.

Is there anything extraordinary in the check you propose giving to the Governor upon the Legislature?—Why look at the authority you confer upon the Judiciary. You put it in the power of four or five men to pronounce any act of the Legislature which they may deem unconstitutional, absolutely void—to treat it as a dead letter—to trample it in the dust—aye, though it has been passed into a law by the vote of three-fourths or nine tenths of both houses of the Legislature. And where, let me ask you, is the man who would propose to strip the Judiciary of this power? We all, I trust, feel and acknowledge it to

be a most wholesome and salutary one. If it is right thus to arm the Judiciary against the Legislature, is it not equally right to give to the Executive the power in question? The Executive & the Legislature often come into collision with [each] other.—The Legislature may invade the province of the Executive, and encroach upon his just rights. And will you give him no means of protection? I would not arm him with a sword to bathe in the blood of his enemies, but I would give him a foil with which to defend himself against their deadly thrusts. I would not put in his hands offensive weapons, but I would cover him with a shield that would enable him to repel the darts that were aimed at him.

I will detain the Committee no longer. I have already occupied as much of their time as I have had a right to claim. I am in favor now, as I have always been, of the veto power. It was the opinion of my youth—it has been confirmed by reflection in my riper years; and I will not abandon it now, under the influence of causes extrinsic in their nature, and temporary in their duration.

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

On motion of Mr. Clark,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

Mr. Stokes presented a petition from sundry coloured inhabitants of New Jersey, praying to be admitted to the right of suffrage;

Which was read, and

Mr. Hornblower moved that the petition, together with the one presented yesterday on the same subject, be referred to a select committee of five;

Which motion was disagreed to.

On motion of Mr. J. R. Thomson,

The petition was ordered to lie on the table.

The convention then resolved itself into committee of the whole, Mr. Stratton in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on the Executive Department.

[A]Mr. Hornblower said he rose with diffidence to address the Convention again, and was well aware of his responsibility in prolonging the debate. He was not only a freeman himself, but represented freemen; and we should take full time for deliberation and discussion upon

the Constitution we are about to adopt even though we should not finish our work in the time prescribed by the Legislature. If that Legislature had said we should decide upon and perfect the Constitution in a week or ten days we should not have regarded it—and so we should take time for a full discussion now. We are not doing ordinary work of legislation—but making an instrument which is to be a lasting and permanent one. It has been said that members came here with their minds made up. I repudiate that idea. My mind has been changed again and again by the arguments to which I have listened. I came here to be instructed and will be heard when I wish to speak and want to hear others.

There is no reason for it in the narrow limits of N. Jersey and in the limited power and prerogative of our Executive. It arose from the same principle as the sentiment of Gouverneur Morris which doomed him to ignominy and disgrace, and followed him to his grave. That government was instituted to protect the people from themselves. What is the use of the veto? To protect the people from the act of their own *sworn* representatives—who are accountable to the people at the next election! That is the avowed object. You can not trust these representatives but must trust one man elected three years before and without reference to any particular subject of legislation. It is anti-republican and anti-democratic. It was never intended to be exercised in a legislative capacity. That after the representatives of the people should have considered and passed a law, the Executive should sit down and say "you are all a pack of fools; it isn't wise and politic, and don't suit my views," and then send it back. That was never its object. It was intended solely to protect the crown, against the people. It is a monarchical power. The regal veto was absolute—not that it required two-thirds or three-fourths to pass a law, but that it should not be a law at all. That was the purpose of it and three centuries in England hardly furnish an instance of its exercise. For the same purpose the Executive had the power of proroguing and dissolving parliament. That was more frequently exercised. These are all parts of the same system—they all arise from one source. Why not adopt all here, if any? I hate and oppose them. Let those who make professions of their love for the people, prove it in this way if they choose, I shall not and will not do it. The proroguing power was in the old Constitution of N. York—and was exercised once or twice, but the people would not submit to it, and called a convention and altered the Constitution.

Look at the practical effects of its exercise. I defy any member to lay his hands on any case in which it has been exercised in the last 15

or 20 years and show any good that has resulted from it. Why therefore shall we continue it here beyond the qualified veto agreed upon as a compromise by the committee. If the Governor is to have the nominating power, no member who expects or wants an office for himself or his friends would dare to vote for a bill which he has vetoed. If I had a son who was a candidate for an important office I should hardly dare to trust myself. Why then shall we preserve this power? Our Executive has no prerogatives. He does not come within the category of those who can do no wrong. No such thing. But you will give him a power by which he can prevent every law which has been passed by a small majority. Take the case of an important political measure or any other question of expediency passed by representatives elected with direct reference to the very subject, and passed by a majority of one or two. If the Governor is in a minority he will veto it. To be sure he may give his reasons, but they are always to induce those who voted *for* the bill to vote *against* it, and not to induce those who voted *against* it to vote *for* it. Suppose the Legislature of last year had framed a law which was very obnoxious to the people and the Legislature next year should be elected for the very purpose of repealing it. They pass a repealing act, but the Governor sits by in his dignity and says I will veto it. What right has he secured by this exercise of the veto power? Why should we give him a power to be played with, or used for party purposes? Why should we give him an absolute veto of all laws which are not passed by a majority of three fifths? If I thought the interest of any section or class of our State required it, I might vote for it. If I believed that in our narrow boundaries the rights of my children, or children's children should require this protection, I should vote for it, but blessed be he who is the God of nations—we have no reason to fear such danger, but rather to believe that when we, whose heads are frosted with age shall go down to the grave, we shall leave them more safe and patriotic and intelligent than ourselves. I don't want to anticipate any occasion for the Governor to defend himself against the people. I would give him this dagger which the gentleman alluded to this morning so eloquently, for his defense.

But there is no such danger, we get these notions from reading Blackstone and the history of despotic government. And suppose the Legislature should pass a bad law, would it not be better to submit to it quietly for a year and then turn out our representatives who made it, than to give the Governor the power to lay this stumbling block in the way of the people's rights? Who would not prefer the former?

I know the veto power is recognized in the Constitution of the

U. States, but that is not a government of the people; but of the 26 States. The veto may be a blessed conservative principle in a Federal government. Congress may pass acts affecting the rights of the States and consolidating power, and it is right to require the consent of two-thirds before the sovereignty and rights of the states should be affected. When the Constitution was adopted, it was not to take effect unless *nine* of the *thirteen* states should ratify it, and if there were *ten*, it was only to affect them, and not the three others. But are we thirteen counties who want the veto to prevent any of them from being blotted out of existence? No, Sir. I am willing, that the Governor, after a law is passed, shall sit down with dignity and self-respect, and consider the arguments for it and against it; compare it with the constitution, and after all the light he can receive, if he thinks proper, may point out that it is unconstitutional or unwise, or inexpedient—and may suggest any difficulties or dangers, and point out where the public interest requires that it should be altered or amended: and that if opposed to it after this dignified and calm alteration, he shall as a republican Governor make his reasons known to a republican legislature, and let them review the act at their leisure; and if they still think they are right, let the people be above the Governor—but if he points out good and substantial objections, then let them be received with respect and concurred in. With these views he should vote against the amendment.

Mr. Dickerson. It is very evident that many politicians and Statesmen, stand in a false position with regard to this subject; and what they have before considered to be proper, they do not now. Many of those who agreed with Hamilton, King and others who were in favor of the veto, are now opposed to it; and others who admired Franklin, Gerry, Mason and others who opposed it, are now in favor of it. It arises from this fact. That in the exercise of the power, at some times the interest of one party has been favored, and at others of another.—From my infancy my feelings and prejudices have been against it, but it has always been exercised with forbearance, and has prevented laws going into effect which were against the interest of the country. And therefore I am somewhat reconciled to it. He was willing to go for the qualified veto reported by the committee, and to require the subsequent assent of three fifths would not make much difference. A *majority* in the Senate would be ten; three fifths would only be *twelve*. In the House *thirty* would be a majority; and three-fifths would only be *thirty-five*. The difference therefore between three fifths and a majority is small and is not a stumbling block to me; and if we give

the power at all, we may as well make it so that it shall be seen and felt. Indeed the veto as reported, is nothing more than an injunction to the Legislature to re-consider their action; and if a majority still concur, it is a law; but this is stronger than in the Constitution of the U. States. By that a majority of a quorum may pass a law.—and after a veto, two-thirds of the members present may pass it; which is often not equal to a majority of the whole number: we require a majority of the whole number in N. J. to pass a law, and I hope we shall always, as I consider it of great importance, although it is not so in all the other states.

Mr. Zabriskie said: Mr. Chairman: Before I enter upon the subject immediately under consideration I will reply to the remarks of the Hon. the Chief Justice in relation to our right to sit here and deliberate *after* the period prescribed by law. I had supposed Mr. Chairman that it was conceded on all sides that we must be governed by the laws of the Legislature under and by the authority of which we have been elected and convened. Sir, I can hardly find language sufficiently strong to express my astonishment at the remarks on that subject of the Chief Justice. He declared that he would disregard that law and sit here as long as is necessary to speak and deliberate fully on that subject. Sir that is nullification with a vengeance. (Here the Chief Justice made an explanation which induced Mr. Z. to abandon that point). Mr. Chairman: Gentlemen have spoken of the veto power as a dangerous and anti-democratic power. The C. J. declared it to be a relic of despotism that should not have a place in a republican constitution. It has been declared to be a dangerous power, calculated to oppress the people and subversive of their rights.

Gentlemen are mistaken Sir in reference to the origin of this power. History informs us that it owes its existence to the revolt of the people of Rome. They retired from the city to the sacred Mount and demanded the rights of freemen. They thus extorted from the aristocratic Senate a decree authorizing them to elect tribunes of the people annually. On these tribunes was conferred the power of annulling any decree of the Senate by simply pronouncing the word veto. It will be seen therefore that the power referred to is of democratic origin. That it was extorted from the aristocracy of Rome and designed for the protection and security of the people's rights. It has not lost its democratic character nor its conservative influence by being hitched to the car of Royalty. Sir there is but one single point of analogy between the existence and exercise of the veto power in Great Britain and in this country. And [that is] that in both cases it is designed to protect the

sovereign power. It is to be particularly remarked however that *there* the Sovereign power resides in the King—*here* in the people. There it protects the prerogatives of the crown. Here it shields the people from the consequences of improvident and reckless legislation. Gentlemen are mistaken Sir when they suppose that the design and effect of this power in our constitution is to protect the "prerogatives" of the Governor. What powers will he possess that the Legislature may invade?—None Sir. He will be perfectly shielded by the Constitution. Not so the people. The effect of the exercise of this power is simply this. The Legislature passes an act. The Governor deems it unconstitutional, wholly inexpedient or oppressive to the people and vetoes it. It is returned to the House where it originated. It may then be reconsidered and again passed by a three-fifths vote. That is by the addition of *five* votes in the house and *two* votes in the Senate. If it fails there it is necessarily then referred to the people. In the next succeeding election, if the principle or policy involved is deemed of sufficient importance, the members of the Legislature will be elected with reference to that very question. The effect therefore of this power is to refer all questions upon which it operates to the Sovereign power, the people. Do Gentlemen object to such an arbiter? Have they confidence in the people and yet refuse to submit important questions to their discussion? But asks the C. J. Do you want to protect the people against themselves. No, Sir, No. We desire however to protect the people against the reckless action of their representatives. Fortunate would it have been to the people of this country had they received such protection. Had they been so fortunate as to have found some man of "iron will" who dared to shield them from the consequences of the action of their own representatives, the States would not now be groaning under a debt they cannot discharge, alike oppressive to the people and disgraceful to the country. The C. J. remarked that he "defied any man upon this floor or elsewhere to point to one single benefit ever secured to the people by the exercise of the veto." Sir, I might reply by asking whether any evils have ever been the result of its exercise. But I will not thus dispose of the subject. And first I will remark that in *no case whatever* has the judgment of the Executive in the exercise of the veto been *reversed*. This proves at least that the power has not been abused. When General Jackson placed his veto upon the Maysville road bill, there were appropriations then pending to the enormous amount of two hundred millions of dollars. Who could have predicted what the result would have been if that great man had not "taken the responsibility" of arresting that odious measure. So in

regard to the United States Bank. Will any be found *now* who dares condemn the action of the Executive in reference to that measure? Is it not manifest that the veto upon that bill not only protected the treasury of the U. S. from being plundered, but it drew the fangs from the jaws of the monster, and rendered it comparatively impotent for evil. And Sir, what was the judgment of the people upon those acts. They sustained them with enthusiastic unanimity. So in reference to the vetoes of Mr. Tyler. After a reference of those questions to the people a large majority of their representatives was returned to the House of Representatives of the U. S. Sir, it has been remarked that although the crown of Great Britain possesses the power of the veto, the King or Queen dares not exercise it. I will admit that the exercise of the veto in England has ever been odious to the people, and dangerous to the Sovereign. But why is this Sir? Because there it is designed and used to prevent the passage of laws intended to relieve the people from oppression and suffering, and to protect the prerogatives of the crown. Here it is designed and used to shield the *people* from the action of unconstitutional oppression or unjust laws. In England the crown can accomplish its purpose without the aid of the veto. It can arrest the action of an odious measure by the erection of Peers, and by bribing and corrupting the commons. In the days of Sir Robert Walpole, and subsequently, whenever deemed necessary, the members of the House of Commons have been bought "like cattle in the market." Our Governor will possess no means to purchase a bribe, if he had the disposition. The gentleman from Hunterdon (Mr. Clark) derives an argument against the veto from the contemplated constitution of the Senate. He supposes that if Senators are elected for three years, more care will be taken in their selection. They will be men of sound judgment—of great discretion and less liable to err. That the Governor will likewise be a man of high integrity and great discretion. That if he should return a bill with his reasons, they would receive all the consideration to which they were entitled. And that, that would afford sufficient security. What is the testimony of experience on this subject. It is to be presumed that Senators of the U. States possess as high qualities of mind and heart as will be found in our State Senators. That the Presidents of the United States, have possessed as much of intellect and patriotism as we can reasonably hope to find in our Governors. What effect has the facts and arguments of our Presidents produced upon grave Senators when returning a bill with his objections. Is there a single case on record where the judgment of either House has been reversed, or even a single vote changed.

Not one. The truth is, that grave and dignified as our U. S. Senate is, in its general deportment—elevated as it is in talents, and exalted in patriotism it is moved by the same popular influences that control the other House. The argument of my friend from Hunterdon cannot therefore abide the test of experience. To sum up all let us see what the number of vetoes are compared with the whole number of acts passed by Congress. Since the establishment of our government there have been enacted about seven thousand laws, and only 20 of them have been vetoed. In not *one case* has the judgment of the Executive been reversed by the people. And in *every* case where the questions at issue have been referred to the people for their judgment a verdict has been rendered in favor of the Executive. Mr. Chairman, I hold the veto to be the great conservative power of the people designed to protect their rights and preserve their liberties unimpaired and I trust most sincerely that it will become a part of our constitution.

Mr. Schenck said—

Mr. Chairman—It has been maintained with much earnestness by several members, that the power proposed to be conferred upon the Executive of interposing his negative upon the acts of the legislature is conservative, and that its operation would be salutary in restraining unwise or precipitate legislation.

This proposition is advocated by some gentlemen on the ground of its antiquity. They have traced its origin to the Roman Commonwealth, and argue its beneficial results in all times past and all time to come from the laudable motives which called it into existence—the patriotic desire to establish a guard or shield to protect the people from the assumptions, and exactions of an arbitrary Senate. It is of little consequence to discuss whence it originated, that it was a power exercised in behalf of the people's rights by the tribunes appointed by the people of the Roman Commonwealth is readily conceded.

But, Mr. Chairman, it must be borne in mind that the political construction of the Roman Government was in no respect analogous to ours. There the legislative power was in the hands of the Senate, an aristocratic body of men appointed by the Executive power from a class of citizens who claimed precedence, on account of superior dignity and special immunities. They were also appointed for life—and were not responsible for their conduct or legislative acts to the people in any way. They of course cherished no common feeling of sympathy with the people nor did they regard their wants or their wishes—under such an organization the people had no controlling influence, no agency in making the laws, no power to restrain or direct the law making

power—that they often suffered oppression by the imposition of onerous taxes we may not doubt—and the establishment of a power derived from the people themselves, to protect themselves from legislative rapacity was highly proper and conservative.—But sir under our peculiar form of Government, the people stand in need of no such protection. The whole frame work of our political organization is composed of checks and balances. They retain in their own hands the sovereign power, the power exercised by the several departments of the Government is derived from the people themselves and have their respective functions so defined and circumscribed as to be a check upon each other. Such Mr. Chairman is our theory of Government. Its practical operation thus far has been a happy illustration of the soundness of the theory. The foundation on which alone can be established constitutional law is the popular will.

As we are now convened to reframe the fundamental law of our State it is an appropriate time to review and define the elementary principles of our political association. In every form of government there must of necessity be a sovereign power to command, what may be done, and those living under that authority are bound to obey the sovereign authority. In free governments the supreme power attaches to the people in their aggregate capacity—and the development of their power consists in making laws and enforcing the execution of them.—Hence it follows that in popular governments the people are both the sovereign and the subjects. In their collective capacity they enact laws, in their individual capacity they become subject to the laws which themselves have enacted. But it would be inconvenient and impracticable for the whole body of the people to come together to enact laws, and equally inexpedient and inconvenient to go en masse to execute them.

To obviate this difficulty and at the same time give efficiency to the popular will reason has devised and experience confirmed the propriety and security of exercising the attributes of sovereignty by the agency of representatives.

Under this organization the popular will is the controlling power and the people maintain their sovereignty by the elective franchise. The necessity and advantage of resorting to the action of Representatives (elected by the people themselves) to exercise the powers of government being admitted, the next enquiry will be how can the several powers be circumscribed and divided so as by their concurrent action to produce the greatest amount of good to the greatest number of the people—one of the essential principles of free government and

that which pervades our whole system is to prevent the accumulation of power in the hands of any one individual or any body of men. Power wherever accumulated, or given for unlimited time is ever liable to abuse—Free government cannot exist unless there be power to make laws. A power to execute, and a power to adjudicate them. And these three departments of power must have infused into them so much energy as to render the administration efficient, for the purpose of maintaining equal rights, dispensing justice, and securing domestic peace and promoting individual happiness.

From this view of the subject before us I am decidedly in favor of giving to each department the full exercise of the power which legitimately belongs to it, holding each department responsible to the people by whom it was created and clothed with competent powers for beneficial action.

I am also desirous from other considerations to see this amendment rejected by this committee.

The system of Government under which we have formed our habits, our usages and our political associations ought not to be lightly changed, the defects ought to be evident & manifest and the remedy obvious and definite. Now I would respectfully inquire whether any injury has been sustained by our citizens that has been averted or avoided in other States by virtue of the conservative application of the veto power. I presume such a result will not be maintained. We may compare advantageously to ourselves our condition where the negative power has never been applied because it has no existence in our organic Law. The opinion and desire of the community so far as I have heard that opinion expressed is decidedly favorable to the old land marks being preserved in our new constitution—The power now proposed to be deposited in the Executive is an innovation which in my judgment is not called for by public opinion, or likely to vest a power in the executive which will be exercised for the people's benefit. Again the design of an executive department as before remarked is to see that the laws enacted by the Legislative department be faithfully executed, but the power hereby proposed to be conferred, abates the legislative power and reposes in the executive a discretionary power to say what laws shall be executed and which tends to occasion a collision between the departments and destroys that harmony of action so favorable to the abiding confidence of the people in the Government which they have established, directed by agents of their own choosing. Much has been said about the rights and security of the people, as though there were any difference between the interests of the people here in conven-

tion assembled and the interests of those who have delegated us to act for them and in their behalf. I presume no member of this convention contemplates any such action by this convention as shall secure to any individual here any privilege or immunities. For myself, sir, whether here or at home I feel that I am neither more or less than one of the people, having the same interest, the same welfare to be promoted or prejudiced by the constitution now to be formed and the laws which may hereafter emanate from the Legislative authority thereby to be established.

In conclusion Mr. Chairman it will give me pleasure to participate in the spirit of compromise by which the action of the convention has been conducted, and I will therefore cheerfully sustain the provision of a qualified veto as reported by the committee on the "Executive Department."

Mr. Parsons was in favor of the article as it had been presented by the committee. He had examined the Constitutions of several States and he found that in several of them after a veto, two thirds of a *quorum* were required to pass the bill. In the report which we had adopted as to future amendments of the Constitution, the majority principle was retained not only in one house, but in both; and he thought that was a subject which required great restrictions. He read the provisions in several States as to the veto, and found that iff no one of them was a subsequent vote of two thirds necessary.

Mr. Allen was opposed to any veto power and upon *principle*. If he had a clear perception of anything, it was upon that subject. We have never had it; and there is no evidence that public opinion was now in favor of it, or that the people would approve it. Hence he was not willing to agree to any principle as a compromise even that reported by the committee. It would be odious to my constituents. Suppose the bill is passed during the last ten days of the session—if the Governor does not choose to return it, he has the first three days of the next Legislature to do so—but will not the public interest suffer all summer?

In the old countries there was a perpetual struggle between the people on one side and the sovereign on the other: but in the strife the people were always victorious and the sovereign was continually weakened; and this is almost the last remnant of sovereign prerogative left in the hands of the King of Great Britain. And no law that has been enacted for the last 2 or 300 years has been vetoed.

But in a republican government the people are the source of all power. Hence it was feared that the Legislature would overpower the Executive, and the Convention which passed the Constitution of the

U. States, attempted to strengthen the power of the Executive.

But experience shows that the Executive is the source of all power, and the events of the last few years, prove that every thing is swallowed up in the great gulf of executive power and patronage. We all wish to curtail it. Was there ever an instance in N. Jersey when the Legislature has usurped the rights of the people? Did not all the misfortunes of the French Parliament, and of the long Parliament in England arise from the controlling power of one man? Why then shall we adopt this principle, which increases the power of the Executive? —I cannot vote for it. It is not adapted to the desires or wishes of our people and therefore I raise my voice against it.

Gov. Vroom followed Mr. A. in a most able argument to prove that the veto power was democratic—the negating power of the people themselves—not to protect the people against themselves, but through one branch of their representatives to protect them against the power of another branch when improperly exercised.

Mr. Green replied in a most impassioned and eloquent speech against the veto—and that the Legislative and Executive Departments should be kept separate and distinct.

[G]Mr. Green said he had never heard that the people of New Jersey desired the incorporation of the veto power in the new constitution. He had never heard among all the objections made to the old constitution, any complaint, either in public or in private, because of its not containing this feature. When, therefore, I heard that this proposition had been discussed in the committee, I was astonished. I had heard the old constitution assailed on the ground that the governor had too much power—that in his person were united executive, legislative and judicial functions. It was proclaimed that one of the objects of framing a new constitution was to separate these functions. When, however, the report was made and I found that it proposed a qualified veto, or rather no veto, and when I learned that this report was unanimous, I supposed that it would be adopted at once. When, therefore, the gentleman from Sussex opened the question, by his motion, I was taken by surprise.

Mr. Ryerson explained that it was a mistake that the committee were unanimous, on this point.

Mr. Hornblower, the chairman, confirmed Mr. R's statement.

Mr. Green accepted the explanation but it was nevertheless an unexpected discussion to him. The direct and plain issue is shall we give the Executive a check on the legislative department?—That is the issue. I care not whether the check is two thirds or three fifths. The

principle is the same and I am surprised to hear the latter spoken of as a compromise. It is no compromise.

The gentleman from Morris (Mr. Dickerson) says he is in favor of the old constitution in this respect: but he has brought himself to consent to the three fifths plan, because it is proposed as a compromise and there is little difference between three fifths and a majority—only two votes in the Senate and six in the lower house. But sir, the practical result is this, that the number of votes is just sixteen which the governor can overcome by his single veto. If a bill has one less than five majority in the Senate and twelve in the Assembly, the governor can forbid its passage. In plain terms you give the Executive sixteen votes in the legislature. Now will you do that? Is there a man here, who will come out for the proposition, that the governor shall have sixteen votes, to overcome the same number of votes by the representatives of the people? As free men and representatives of free men and of Jerseymen will you do it? Have Jerseymen asked for it? Has N. Jersey suffered for the want of this feature in her constitution.—Have her farmers and mechanics any where asked you to wrest from their representatives, chosen by them every year, the influence of sixteen votes, and give it to an Executive who is elected for three years. If sir there is one measure less plausible and less desired by the people than any other, it is this. No man will accuse me of a want of conservative feeling. I am willing to impose reasonable checks on hasty legislation, but I never have been willing and never will be willing to take away the power of legislation from the representatives of the people and give it to one man, not chosen at all with reference to legislation, and that man to hold office for three years and have perhaps, the appointing power. Why, sir, it was alleged against the late executive that he held both the Executive and legislative power; and then he had only a casting vote on preliminary but not on final questions; but here, you propose to give him 16 votes, as plainly as if you gave him the money to corrupt and buy up that portion of the legislature, like cattle in the market.

As to restraining hasty legislation, there is already proposed a check upon that by giving a three years term to the Senators; and I rejoice at the proposition, in common with the gentleman from Somerset (Mr. Vroom). Such a provision will do much to prevent unwise legislation. Gentlemen have referred us to the Federal Constitution. This principle was incorporated in that instrument, Hamilton tells us in the Federalist, as a protection of the Executive against the legislature, and that it would never be resorted to but for that purpose, and in the last extremity. Has experience confirmed this? Has the veto power been used so rarely? Has experience not taught us to fear that sometimes an Executive of great resolution, of an iron will, may claim to put himself between the people and their representatives—a man who can sway the people to his purposes—have we not learned to fear I ask, that such a man may do wrong—I do not say, has done wrong—and may laugh to scorn the will of the representatives of the people? Gentlemen say this is all right; but I say it is not consistent with the theory of our government. It's a violation of the fundamental principle of republicanism. It gives the executive the power to defeat the will of the people, expressed by their representatives. I know it is a modern doctrine that the Executive is the representative of the people.—But I maintain that for purposes of legislation the Executive is not the representative of the people; but the sovereignty of the people as respects legislation is vested in the legislative branch. Gentlemen say the legislature may be corrupted; but where is the greatest danger,—with an Executive tampering with the legislature—or with an Executive over-ruling their votes?

You say that we have had bad legislation in this state, in consequence of there having been no veto power. But will you exchange the legislation of New Jersey for that of any state which has had this feature in its constitution? You say that our legislature liked to have involved the state in great pecuniary embarrassments. Aye, and the Pennsylvania legislature did involve that state in great debt, notwithstanding the veto power of their Governor. Now, who is the best off? Did the veto power in Pennsylvania aid them in restraining improvident legislation? Are they with their veto, better off—more free from debt—than we without it? It is true we have had improvident legislation here, in regard to private business. Has experience taught us that the veto power in other states has prevented improvident legislation of this kind there? When in Pennsylvania has there been a veto of a private law? Has there been one in the last 25 years? Has there ever been a veto in any state, of a single improvident private law?

I will admit a strong case—that two parts of the state might be influenced to combine to pass a bill against another part; and gentlemen say that the Executive might interpose and veto law. But, sir, the chief source of all improper legislation is party spirit; and has a veto ever been interposed, against the current of party feeling. We are told there have been 20 vetoes and about 7000 laws passed by Congress. This then has not checked the course of legislation much. Most of these vetoes have been within the administrations of the last three

Presidents. Has the power been used to check party legislation? The check ought to be in a man opposed to the majority of the legislature; but when the Executive and the legislature are on the same side, your check is all gone.

If you will propose some check on hasty legislation, I'll vote for it; but a check to operate only half the time is not what is wanted. Appoint a censor for life if you choose, of the acts of the legislature. Then your check will operate all the time. But with a party legislature and a party government where is your check?

Some gentlemen say the veto power is a power to protect the people. It is perfectly immaterial what you call it; but we all know that its object was originally to protect the Executive, and this idea of protecting the people is a modern idea to make the principle more palatable. The object is to protect the Executive. Our Executive has been weak enough. Has he ever needed protection from legislative encroachment? The evil has never been experienced here. I have yet to learn that the people of New Jersey have ever thought the legislature had usurped the powers of the Executive; and if in 60 years they have not done it, is it wise in us to make this innovation and try this experiment.

Another view of gentlemen is that bad laws have often been passed hastily under some temporary excitement or improper influence and that such laws would be passed again. Now against most of such laws, the article as reported is a sufficient guard. Much of our hasty legislation has occurred at the end of the session—in the last two or three days, when the rules are suspended, and bills urged through in a single day. Look back upon the legislation of the last 20 years and you will see that almost all of such laws have been passed in the last week of the session, and if the Executive had had the power given him by this article, of retaining such bills till the next session, they would never have become laws. Nor would they have been passed a second time by both houses after the Executive had retained them ten days and sent them back with his objections. But when bills have been once passed, if both houses, after ten days' reflection, determine upon their second sober thoughts that they ought to pass, I say let them pass.

The governor has been called here the representative of the people. He is so for one purpose—to execute the laws—but he is not the people's representative for making the laws. The judges of the Courts are representatives of the people also—for a special purpose. At the election of governor the people rarely or never think of selecting him with reference to legislation.

I consider it an unnecessary abridgment of the people's power, to give the Governor the power of over-ruling the votes of sixteen of their representatives, besides giving the influence of an appointing patronage. Shall we arm him thus with the power of setting himself as a great obstacle in the way of the people's wishes.—Shall the representatives of the people of New Jersey ever to be told, as the representatives of the people of the United States have been—that the executive power and patronage constitute a Constitutional fact and that they must shape their legislation accordingly. I wish every representative in the legislature of New Jersey to be relieved of the influence of such a fact and to be free of all executive power, executive patronage and executive corruption.

The vote was then taken on the amendment; and resulted ayes 27, nays 26.

Several voices—The Chair has not voted! Let the Chair vote!

Mr. Zabriskie. Not in committee. *The Chair has no vote here.* [According to the *Sussex Register*, Newton, he said: *"The Chair has not voted here."*]

The Chairman. The Chair votes in the negative; the motion to amend is lost.

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

The Convention adjourned till to-morrow morning, at nine o'clock.

SATURDAY MORNING, 1st June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by Rev. Mr. Kidder.

The convention resolved itself into Committee of the whole, Mr. Stratton in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on the Executive Department.

Section 7. Mr. Hornblower moved a verbal amendment, but withdrew it.

Mr. Spencer moved to add to the section, "but in neither house shall the vote be taken on the same day on which the bill is returned

and in all cases, the yeas and nays shall be demanded," which was adopted without discussion.

Mr. Hornblower, in order, as he said, to avoid the difficulty now apparent of keeping the people ignorant whether a law has passed or not for a whole year, as would be the case where the Legislature had adjourned before he had signed a bill, moved to strike out all after the word "unless," in the 14th line, and insert "the Governor shall, within ten days after the adjournment of the Legislature, file the same in the office of the Secretary of State, with his reasons for disapproving the same."

Mr. Vroom. Does not the section now amount to an absolute veto? There seems to be the difficulty; and I submit whether we had better not adopt the course provided for in the Constitution of the United States—make it five days instead of ten, and then, if after the expiration of that time, and the Legislature choose to adjourn, it shall not become a law. It will only have the effect of keeping the Legislature in session two or three days longer, and will induce them to pass upon all important measures in due time, and that before adjourning. I move that amendment.

Mr. Ryerson hoped the gentleman from Somerset would withdraw that proposition. His great desire was that if the Legislature passed an obnoxious law, not only that the Governor might have ample time to consider it, but that public sentiment with reference to it might be ascertained; and this could not be expected if only five days were allowed. He felt satisfied that this would be the most desirable course.

Mr. Zabriskie. How would the people be apprised of the fact whether the Governor had or had not signed a bill in the ten days?

Mr. Condit was in favor of the alteration, and thought the time long enough; and as for waiting to ascertain the sentiments of the people, that would form no safe guide for the action of the Governor, for what opportunity would they have of forming a correct opinion on the subject? He had seen enough of the hasty expression of public opinion to satisfy him that if was not a safe guide, and that it ought not to be taken.

After a few remarks the amendment was agreed to—Ayes, 21, Nays 10.

The word *not* was inserted in the 14th line, after the words "*shall be a law,*" and a motion to strike out all after the word "law," in the 14th line, was agreed to.

Mr. Parker, after contending at some length that there was no necessity for this section at all, and that it was not called for by the

wants of the State, (providing for the veto power) moved to strike it out altogether, which, after a reply from Mr. Zabriskie in favor of retaining it, was lost, he being the only member voting in favor of the motion.

Section 8 passed.

Section 9. Mr. Hornblower moved to strike out the word *remit*, and insert instead thereof, the words "to suspend the collection of," which was carried.

Mr. Parker moved to insert the word *next* before the words "Court of Pardons," which was agreed to, and the section as amended was adopted.

Section 10. Mr. Hornblower moved to insert the words "remit fines and penalties" in the second line, after the word may.

Mr. Browning moved to strike out the words—"the Justices of the Supreme Court," so that the Court of Pardons should be constituted by the Gov. and Chancellor alone, and in supporting this, he said, "My objection Mr. Chairman, to this Court as now constituted is, that it is a blending of the Judicial and Executive branches of the Government which ought in my opinion to be kept separate and distinct. The idea of conferring upon the same power which has tried and condemned a man, the power of pardoning him also is exceptionable in theory and in practice. Some one of the Justices of the Supreme Court in most cases forms a part of the Court which condemns, but it may be argued from this fact, that the Justice becomes by this more familiar with all the circumstances of the case than any other individuals, and more competent to pass upon the proprieties of extending a pardon. But I submit Mr. Chairman whether it is not better and wiser to constitute a separate and distinct Court, and to let that Court derive all the information they may require when applications are made for pardon, from the Justices.

Another objection, and one which I conceive to be a very serious one, is that there is divided responsibility in the individuals in whom this power is proposed to be vested. This power should always be exercised with a full sense of the responsibility, but by dividing that between the Governor, the Chancellor and 5 or 6 more gentlemen who may sit as a Court of pardons, you will be unable to fasten the responsibility on any one of them. You give to a majority of this Court to frustrate that which has been accomplished by the unanimous will of another or other tribunals. In a trial the Jury must be unanimously satisfied beyond all doubt that the evidence is too conclusive to have a single doubt, & yet after all this a bare majority of this Court will have

the power to pardon the person thus convicted, and frustrate the intentions of the law.

All experience Sir has shewn that the greatest danger is to be apprehended from the too frequent exercise of this power, rather than by having it exercised too seldom, and if you now give this power to a bare majority, the same evil will continue to be a cause of complaint by the people of N. Jersey. But by vesting the power in the Governor and Chancellor they must be unanimous before the pardon can be granted. You increase on the one hand the responsibility of the Governor and on the other the independence of the Chancellor.

But Mr. Chairman there is another reason why the Justices of the Supreme Court should not compose any part of this Court. If the Governor and Chancellor alone constitute the Court, it is always open —always accessible. But if the Justices of the Supreme Court are to be added, they meet only at certain seasons of the year, and oftentimes a considerable time will intervene before an application for pardon can be made, when perhaps the circumstances fully justify immediate action. This will give time for those actuated by sickly humanity to interpose, perhaps contravene the sentence of the law. For this reason too, I am in favor of bringing the two, the Governor and the Chancellor, instead of [one] on the Court of Pardons as constituted by this provision. In many of the States this power is vested in the Governor alone. To that I am opposed as it may be exercised by him for political purposes—to gratify his friends, or even to obtain votes for a certain object. I would add to him the Chancellor, who will be an officer removed from all the party politics of the day, and thus will act as a happy & effectual check to the Governor alone. For these reasons which I have given thus briefly, for I have no desire to occupy the time of the Committee, I shall hope the amendment will be adopted.

Mr. Vanarsdale said he thought well of the main object of the amendment, and for one reason because it [the report] would be imposing an onerous burthen on the Judges of the Supreme Court. It was not proper in his view that the Judges who sat on a trial should also have a seat in a Court created for the dispensation of pardons. He approved of the proposed change but was not satisfied to have the power with the Governor and Chancellor alone, and he premised incidentally that it would be well to add the President of the Senate, which amendment Mr. Browning said he was willing to accept.

Mr. Lambert wished the power to be vested in the Governor and Senate as now, and Dr. Pitney offered an amendment to that effect.

Mr. Hornblower. I do not wish Mr. Chairman to accumulate either

power or duty in the Judges of the Supreme Court, but the gentleman is mistaken in asserting that all persons sentenced to prison are sentenced by the Judges of the Supreme Court, very many are sent there from the Court of Sessions.—I assent [dissent?] to this amendment on several considerations. I have hardly ever been in this place when the Court of Pardons is in Session that I have not been called on by some member as to the facts and circumstances of some case, in which an application has been made for pardon, and since I have been here now I have been consulted in a case, and but for the information I had in my power to give, a most desperate character would have been turned loose on the community.

Mr. Stites preferred the section as it was. The motion to include the Senate would subject the parties to much inconvenience and the State to much expense, as they would have to be convened from all parts of the State. He liked the addition of a third party, but thought the Chancellor and Governor still preferable.

Mr. R. P. Thompson. As the plan now before the Committee, Mr. Chairman, originated with me, I feel called upon to submit a few observations, and give what I consider the reasons why it should be adopted. It is a subject on which I have reflected deeply, and I have arrived at the conviction that of all the evils in reference to this power, under which the state has suffered, the Court of Pardons as at present constituted is decidedly the worst. It is the worst in its organization, and in its practical operation of any which could be adopted, and the greatest object to be gained while on this subject, is to steer clear of that Court as at present constituted. Is there a member of this Convention who does not know that the pardoning power has been necessarily abused in New Jersey? I say necessarily, Sir, and why? The members who constitute the Court are elected by the people. It is within the experience of all that appeals are made to interest and operate on the feelings of the members in every available manner to induce them to grant a pardon. I appeal to the recent case in the County of Cumberland to bear me out in this assertion. In that case a pardon would have been granted to a person convicted of a most atrocious murder had it not been that the Court of Pardons at last had abundant proof laid before them to convince them of the wrong they would inflict. And how were they operated on? Why some persons asserted that the girl was an idiot—others that she was entirely uneducated, and the crime should be laid to that; others that she was not in her sane mind. All these things were embodied in petitions, and we all know Mr. Chairman with what facility petitions for almost anything

can be got up, and the members of that Court were to turn that girl loose upon society. Now, I ask you, Sir, could the same influences have been exercised if the Court was composed as contemplated by this report? No, Sir, you must appear before that tribunal with facts —with proof, and if you do not satisfy the members in all respects, the appeal will be turned away from Court. We are all familiar with the case of the individual whose pardon was obtained by the intercessions and pleadings of a young and beautiful woman from New York, who represented herself as the wife of the convict, but who proved afterwards to be a courtezan. Could she, Sir, have appealed with the same success to the Judges of the Supreme Court—to the Governor or the Chancellor? No Sir, they would not have listened to her appeals for sympathy, but only at the law and the facts. I have cited, perhaps, an extreme case, but in guarding against evils, we must look, Sir, at extreme cases.

But the objection is raised against the Judges that they have sat perhaps on the trials. Well, Sir, and who more competent than they to decide upon the propriety of granting a pardon? In civil cases when a cause is carried up to the Supreme Court, do not the Judges of that Court always apply to the Judge before whom the case was tried for information. In the Cumberland case, the information which defeated the application for a pardon, was derived from the Judge who had tried the case.

This, sir, I consider, is the best and safest power we can create, the blending of the Judicial and Executive power, but I do not care where you place it, so you take it from the Court in whom it is now vested. I have, sir, heard nothing which I consider a good objection to the provision now before the house—nothing at least which has served to induce me to change my opinions.

Mr. Parsons expressed himself as in favor of having the Court constituted by the Governor and the Senate.

Mr. Child considered that the worst amendment which had been offered. He would vote for giving the power to the Governor, Chancellor and President of the Senate. But would prefer the Governor and Chancellor alone.

Mr. Mickle objected to giving the power to these, and pointed to Pennsylvania and Maryland as instances of the gross abuse of it.

Mr. Ewing was decidedly opposed to the Court being composed of the Governor and Senate, as well on account of the inconvenience as the expense, and was in favor of the plan reported.

Mr. Lambert objected to it, on the ground that it vested the pardoning power in the very man who had sat in judgment on the prisoner. He cited cases illustrating his objection, one of a man sentenced to 20 years for horse stealing, and who served out 10 years before he was pardoned, and then it was ascertained that he was a brother-in-law to a distinguished Senator, who had been overcome by want away from home. Mr. Parsons also cited instances in which the power had been abused. [Apparently Lambert and Parsons wanted the governor and senate as a court of pardons, and the instances they cited must have occurred in other states.]

Mr. Thompson opposed the idea of having the power vested in the Senate, and he called on the gentleman from Somerset, (Mr. Brown) who as a member of that court had been in session here, to say how many had been pardoned since the Convention had been in session. He asked if thirteen had not been let loose upon society. And in all these cases he insisted that no good reason had been shewn why a pardon should be granted, and he scouted the idea that members of that Court should be turned from their duty by appeals to their sympathies, or tales of distress. He stated that with his colleague he had visited the prison this morning, and a disclosure had been made to him of a most horrid murder committed in his county, and which must, he said, be ferreted out, if there was any power in the law. He concluded by expressing the hope, that the members would go against the amendment, as it was wrong in its conception and wrong in its practical operation.

Mr. Stokes was in favor of the amendment, and denied the imputation that the members of the Council desired to hold on to the power.

After a few remarks from Mr. Parker, Mr. Brown was called on to state with reference to the cases mentioned by Mr. Thompson. He said, as I have been called on Mr. Chairman to express my convictions on this subject, I have no hesitation in saying that I have never been satisfied with the construction of this Court. I have never been satisfied with the grounds on which applications have been made to the Court for pardons, and I have never given a vote on these applications with which I have been perfectly satisfied. The Court is governed by no rules, but the votes of the members are given upon any idea that may have been excited by the appeals to their feelings or sympathies. I object to the construction of the court on principle. I object to it because it is a representative body. The members bring with them the sentiment of the people from the different counties, and when that is in favor of a criminal it is a sentiment which ought not to have any influence, for it is not only frequently wrong, but it often changes

within six months. In cases where persons have been convicted of high crimes, this has a serious influence. In cases of less importance, I consider that three questions should be considered—1st, whether the party has been innocently convicted and without satisfactory proof—2nd, Whether he has been reformed by the punishment inflicted—and 3d, Whether the punishment is excessive in comparison with the offence.

In a majority of the cases, the Court is not influenced at all by these considerations. The case comes up on a petition signed, perhaps, by the most respectable people in the county, and there is no responsibility in signing a petition. That falls elsewhere, and I have often been told by persons that they believed they ought not to have signed such a petition, but that they had done so from improper motives of sympathy with the family of the prisoner. The question is asked of the member from that county as to the character of the petitioners. He is more or less influenced by popular sentiment, and even if that should not be the case, he feels a delicacy in taking ground against his friends and neighbors. Perhaps from an unwillingness to take this ground, he [illegible]tes that the petitioners are very respectable men. He gives [illegible]tatement of the facts, and then he gives no vote at all. In th[illegible] petitions, grounded on every variety of motive, come before the Court. The age of the prisoner—the respectable character of his family—the poverty and distress in which his wife and children are placed, every consideration which can appeal to sympathy is adduced, and with effect. The other day a case came before us on the petition of a wife whose husband was in prison, and her ground of application was, that she was left alone—that she had ploughed and planted five acres of corn alone, and being in a delicate situation, she could not do any more. I am opposed to the construction of this Court as a popular Court, and I have heard but one objection which has any weight to the plan as reported, and that is the great burthen it would impose on the Judges of the Supreme Court.

Mr. Brown concluded by expressing his earnest hope that the Court would not be constructed of the Governor and Senate, against which he should record his decided vote.

A motion to postpone was lost—Ayes 13, Nays 17.

Mr. Hornblower again opposed this amendment of including the Senate, and cited the well known case of the man convicted in Newark of selling a diseased animal, whose punishment had been lessened to a fine only by the strong appeals of his wife, whose situation commanded sympathy; but the next day she was safely delivered of a pillow, and her husband was at large.

Mr. Condit said he would vote for the report of the Committee as it was.

Mr. Browning briefly advocated the amendment he had proposed, and after a few remarks the question was taken by consent on striking out the Justices of the Supreme Court, and was carried—Ayes 17, Nays 9.

A motion to postpone the further consideration was made, which, after some remarks from Mr. Vroom throwing out suggestions for the future construction of this Court, was carried.

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

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

A quorum not appearing present, [G]Mr. Hornblower moved a call of the House. Not agreed to.

[J]The convention adjourned to Monday afternoon, at three o'clock.

[J]MONDAY AFTERNOON, 3d June.

At three o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Reed.

On motion of Mr. Vanarsdale, it was

Resolved, That the committee to whom is referred all matters not referred to other committees, report whether it is advisable that the secretary of state, ex officio, shall assist the committee appointed by the legislature to settle the accounts of the treasurer, and shall prepare, annually, an account of all charges which ought to be made by the state against him, and carefully examine all discharges for which he claims allowance.

[G]Mr. V. said that the want of an officer to examine thoroughly the accounts of the Treasurer, had been the cause of all the difficulty ever experienced in the Treasury Department. It ought to be the business of some one to keep an account of all the charges which the state has

against the Treasurer. Formerly we had an auditor, but that officer had been dispensed with, and we have relied upon joint committees to examine the accounts; and in the nature of things, they cannot investigate the accounts thoroughly, nor know what moneys the Treasurer ought to be charged with. Mr. Vanarsdale alluded to the errors of a former and the late Treasurer's and showed how they might have been prevented by having an auditing officer.

Mr. Ewing thought the resolution very proper. He had been one of the committee on the Treasurer's accounts, and knew the impossibility of their examining the accounts thoroughly.

The resolution was agreed to [A]unanimously.

[G]Mr. Elmer asked leave of absence tomorrow, when it would be necessary for him to open the Middlesex Circuit. He should need to be absent two days perhaps. Leave granted.

On motion of Mr. Ryerson, the Convention went into Committee on the Executive Department, Mr. Stratton in the Chair.

The pending subject was the 10th article on the Court of Pardons.

Mr. Hornblower read a substitute, providing that the Governor and Court of Errors should be vested with power to grant pardons and remit fines; also, that the Governor might suspend the collection of fines, and enforcement of forfeitures during the vacations of the courts; provided that no pardon should be granted before conviction, or in case of impeachment.

Mr. Ryerson moved to postpone until we should have determined upon the mode of constituting the Court of Errors. Agreed to.

[A]The 3d section (as to the term of office of the Governor) was taken up.

[G]Mr. Hornblower offered a substitute for the 3d article, designed to remedy the defects in the phraseology of that article. [A]And after much desultory debate as to its proper phraseology,

Mr. Wood offered an amendment "That the Governor shall hold his office for three years. It shall commence on the 2d Tuesday of January next after his election by the people, and terminate on the Monday next preceding the 2d Tuesday of January three years thereafter,"—[G]which Mr. Hornblower accepted; and it was adopted.

[A]Mr. Ryerson offered an amendment to strike out the clause which makes the Governor ineligible for three years after serving. He consented that the Committee should report that feature, but on reflection, he was opposed to it. The objection to re-eligibility in the general government is on account of the immense patronage of the Executive which may be used to secure his re-election. But here the Governor has

but little patronage. He was opposed to it in principle—that the people shall not be deprived of saying who their officers should be. He was opposed to it, for the same reason that he was opposed to any property qualifications. It is anti-republican. I would give the people the greatest latitude in the selection of their Governor. In England any man may be elected to Parliament, without regard to age, property or his place of residence, if it is in Great Britain. A man from the North of Scotland may be elected to represent London—Suppose a case which may arise, that we should be involved in war—and we have a Governor who is peculiarly qualified for the office, and his term expires during the war, and the people are anxious to retain him. Why shall we interpose this barrier? He thought the One Term principle for the Presidency was a proper one, and that it would become a practice as two heretofore had been—but that if the people wish to elect their Governor twice, we should not place any fetters or bonds upon them.

[G]Mr. Hornblower seconded the motion. We should give the Executive little patronage, and therefore we should leave no reason at all for introducing the one term principle. The popular clamor in favor of the one term principle in the United States, is raised in consequence of the immense patronage of the President. But no such patronage will be given to our governors.

[A]Mr. R. S. Kennedy hoped it would not be stricken out. [He] [G]regretted that the gentleman from Sussex had changed his mind. I think he proposed this in the Committee. As he admits that this is in accordance with the popular sentiment, I regret that he has not, in accordance with that sentiment, consented that it should remain as reported.

Mr. R. P. Thompson had been in favor of this in committee, and he had not changed his mind. It would render the Governor more independent; and deprive him of the personal inducement of his re-election, to make appointments to office chiefly with reference to their political influence.

Mr. Ryerson explained that it was first proposed in the committee to make the Governor's term four years. He would not consent to this, unless the committee would make the Governor ineligible the next term. Afterwards the term was reduced to three years.

Mr. Brown hoped the amendment would not prevail for the reasons given by the gentleman from Salem. He, (Mr. B.,) was one of the committee, and he had not changed his mind:

[A]Mr. Vroom did not see the propriety of retaining this clause. He would rather the people should have their own choice as to their

Governor. Rely upon it, the popular opinion will settle down upon that. The people themselves will fix the terms without a constitutional provision. They have already in practice done so as to the Presidency—He thought we should not be guided by the popular clamor but by the popular judgment. As to the one term principle, the popular clamor will increase: but it does not originate with those only who fear the Executive patronage, but from those who wish to succeed in the office. They are always in favor of the one term principle, because it brings them nearer to their object—and if the people think proper, they will so fix it. But why shall we adopt this principle? The executive should be independent, but the popular will should be regarded. With us he has no great patronage—only the control of some small appointments, but it is not large enough to require this provision. There may be times when his re-election would be necessary—when he may be more capable than any other to guide the helm of State. I am afraid of these constitutional provisions. Next it will be the Judges of the Supreme Court and Chancellor. Why not? Depend upon it, it arises from the cry of change—change!—a desire that the offices may come round. I do not mean this feeling influences any members of this Convention but the people generally. I think the provision is not necessary. It is not adopted in other States. In Pennsylvania, I know the Governor may hold his office only six years, out of nine, but they are no better off for it. I am willing to leave the matter entirely to the people, [G]and they would regulate it much better than we could.

[A]Mr. Brown thought the gentleman had mistaken the object of the provision. It is not to throw any guards or checks upon the people, but upon the incumbent himself; and the question is, shall we not secure more independence and better judgment by making him ineligible after one term. Now all past experience, and a knowledge of human nature assures us, that if a person by making certain appointments can secure his political power, he will do so. If you adopt this provision, he will have nothing to regard, after his office has expired, but his reputation. But if not, he will consider, whether in making this nomination, he will secure this family influence, or offend that—and there will be the same difficulty as in general government, only more narrow and limited.

Mr. Wood. When the motion was made, I was in favor of it, but I should now prefer that after one term he should be ineligible for ever, or else strike out the provision altogether. [G]He did not think the provision now in the report would accomplish the object.

[A]Mr. Hornblower. I am far from regarding this as a very important matter, and much farther from considering it a *sine qua non*. I am glad that the discussion had shown that we are not circumscribed by party feelings, but I think there are many reasons why we should not exclude him, if the people choose to elect him a second time. In N. York where the patronage of the Executive is next to that of the general government, he may be re-elected, and also in Penn., as has been mentioned. What patronage or power we shall give to our Governor, is yet uncertain. He may not have the nomination of a single officer, and if he does, it will be but few, and those not officers of a popular character, or who may be supposed to have any popular influence, or an opportunity to excite any popular favor or disfavor—probably the Chancellor—Judges in case of vacancies, and perhaps the Attorney-General. They do not and can not be supposed to exercise any political or party influence out of doors. Their terms extend beyond his, and they therefore feel independent of him as soon as their appointments are confirmed. It is true our Governors have heretofore had less patronage to bestow than they will have now, but in years past there have been many instances of their holding their office for twelve or thirteen years, and the public have desired no change, although he formerly had the appointment of the Surrogates and of the Clerk in Chancery. I think gentlemen apprehend danger where none exists. A case of war may arise, which has been alluded to. The Governor is *ex officio* Commander in Chief, and may be called into the field at the head of our militia. He may be a most competent officer in the exigency of the times. His office may expire in the midst of our calamities and the people may desire to re-elect him of all others—but they are told "you must try an experiment.—Your officer is a perfectly good one—executes his duties remarkably well, but by the Constitution, he must cease to act" and he must lay down his epaulettes, and sheathe his sword, in the midst of the calamities of his country! It cannot be necessary to throw these guards around the Executive patronage under the Constitution we are about to frame.

Mr. Clark said that one reason that had been urged in favor of striking out the provision was, that if the Governor should commend himself to the people by his conduct during the three years of his office, they should not be restricted in re-electing him. There is some argument in that, but when weighed with the objections, experience shows us that the balance is in favor of the objections. He who holds his office for three years will desire to hold it three years longer, it will swerve his judgment, and he will do much he would not do, if his office expired at a certain time and all his power and influence with it.

We do not know how much patronage will be given to the Governor—but some certainly will be. Now suppose this case—that as his term is about expiring, it is his duty to make certain nominations to the Senate, and by nominating a certain class he can secure his re-election: taking for granted that he is no better than other men and that he desires to be re-elected, will not this be a strong temptation to swerve from the honest and independent exercise of the duties of his office? I am not willing to put anyone in this position.

[G]Mr. Richard P. Thompson referred the committee to similar provisions in the constitutions of Pennsylvania, Ohio, Tennessee, Delaware, Arkansas, Missouri, Alabama, and several others, [A]to show that they contained the prihciples that the Governor should not be reeligible for a certain time.

[G]Mr. Hornblower apologised for speaking the third time. The governor would be either patriotic, or corrupt. The prospect of a re-election would often, if an honest man were governor, operate as a strong inducement to him to administer the government well, so as to secure a re-election. If he is a corrupt, ambitious man, he will pursue a course compatible with the public interests, in order to get a re-election; but if you make him ineligible, he will indulge his corrupt and vicious inclinations, unrestrained by any regard for the good opinion of his fellow citizens. [A]He said he remembered well, that when a boy, if his parents gave him a holiday, or granted him any indulgence, they would tell him that if he behaved well, a like indulgence would be granted hereafter—or if they allowed him to make a journey to New York, they would offer, as inducement to his good behavior that if he behaved well, he might go again—and he believed that in old age, we are influenced by the same motives and feelings.

Mr. R. P. Thompson thought the story proved too much—and that the parent in the case mentioned would let his child stay in N. York *all the time.*

Mr. Brown hoped the illustrations would be carried farther. We have been told the effect on *good* and *bad* men, and he hoped we should be told of its influence on those of *middling* honesty, a class embracing *most of the politicians!* [G](Laughter)

[A]The amendment (to strike out the clause which excludes from re-eligibility, till after three years) was not agreed to—13 to 28.

After some desultory remarks, as to the proper way of providing for a vacancy in case of the death, &c. of the Governor, whether the office should devolve on the Vice President, or on the Joint Meeting, or whether a special election should be called, and before any action

was taken.

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

Mr. Vroom asked, and obtained leave of absence.

On motion of Mr. Hornblower,

The convention adjourned till to-morrow morning, at nine o'clock.

[J]Tuesday morning, 4th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Hall.

[G]On motion of Mr. Marsh, [J]the convention resolved itself into committee of the whole, Mr. Stratton in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on the Executive Department.

[A]Mr. Hornblower stated that as a difficulty had arisen with reference to the construction of the 12, 13, and 14 sections, he had prepared after consultation with the Committee a section which he would offer as a substitute for those sections viz: to this effect, that pending the impeachment of the Governor or his temporary disability, the powers, duties and emoluments of the office shall devolve on the President of the Senate, or in case of his decease on the presiding officer of the Assembly, who are to act until the disqualification ceases, or until the election of a new Governor, provided that where a vacancy occurs in the office from any cause, or by his death before the Governor shall accept the office or be qualified, a Governor shall be elected by the people at a special election to be held within 60 days after such vacancy shall occur.

This was agreed to, but as several suppositions were thrown out, that all contingencies were not provided for with sufficient certainty, it was reconsidered, Mr. Hornblower contending that it was impossible to provide for all contingencies but that something must be left to Legislative wisdom.

Mr. Marsh thought that the holding of a special election would impose a considerable expense on the people, and he was of opinion that it might as well be left as the committee had reported it.

Mr. Pickel thought it was best in view of the difficulties which had arisen, that the bill had better be reconsidered, and let the Committee perfect the Bill and he made a motion that the Committee rise for that purpose.

Mr. Allen would like to have the sense of the convention taken as to the necessity of a special election. It was not worth while to recommit the bill while that point was undecided. The difficulty here arose from the variety of duties imposed upon the Governor, and another difficulty was that a governor chosen at a special election would hold office for 3 years, whereas at such an election the sense of the people would not be so fully expressed as at their regular fall election.

Mr. Stokes was in favor of recommiting the bill, as he did not see any other way of overcoming the difficulties which now embarrassed them.

Mr. Pickel withdrew his motion to rise, and much desultory conversation ensued upon the amendment proposed by Chief Justice Hornblower, who insisted that if a Governor was to be chosen at a special election, that must be provided for by the constitution. The Legislature had no power to regulate that at all, nor would they venture to assume it. He moved an addition to his own section, viz, that no special election should be held unless the vacancy happened at least one year before the expiration of the term of the regular incumbent and the Governor thus elected should only hold his office for the unexpired term.

The motion to postpone was lost, and Mr. Allen moved to strike out all that part referring to a special election.

Mr. Hornblower said when the Committee rose last evening he thought the sense of the Convention was decidedly in favor of a special election, and he had with all care prepared this substitute with that view.

Mr. Ewing said his idea was to leave this to Legislative action, where in his opinion it ought to be left. He would not have the special election obligatory, but great inconvenience might arise from having the office filled by the President of the Senate for 13 months, as he might be a very incompetent person, and we would wish that the Legislature should have power to act in such a contingency—

Mr. Ryerson, to bring the question of a special election fully before the Convention, moved to strike out in the 12th section all after the word (chosen) on the 7th line, and insert *"by the Legislature in joint meeting at their next session, to hold office for the unexpired term of the political year."* This he said was all that was necessary, and rendered the substitute of the Chief Justice superfluous, and moreover he considered that it provided for every contingency that might occur.

Mr. Zabriskie thought that the substitute of the Chief Justice should not be adopted, as every contingency was amply provided for in the bill as reported.

Mr. Hornblower said he would withdraw his amendment in order that the sense of the House might be taken on the amendment offered by Mr. Ryerson, which would bring the question of a special election before the Convention, but finally agreed to let the vote be taken on it, which being done, it was lost.

Mr. Ryerson's amendment was then in order and was opposed by Mr. Zabriskie, who proposed to let the matter rest above as it is.

Mr. Browning was opposed to the joint meeting election of a Governor for a year, as in such cases he would be chosen from one or the other of the parties, and of course they would select the most popular man, and the whole of the year would be consumed in efforts to secure his election by the people at the next election. Let the people elect their Governor, and if a vacancy should happen let it be filled in the most quiet and orderly manner, otherwise it would only serve as a bone of contention for the various parties to contend about for a whole year.

Mr. Hornblower and Williamson took the same views, and the question being taken on Mr. Ryerson's amendment, it was lost.

Mr. J. R. Thomson moved to strike out the 14th sec., as it was unnecessary, and Mr. R. P. Thompson suggested that it could do no harm, but the broad sweeping provisions contained in it, might in some contingency now unlooked for prove highly important. The motion was withdrawn.

Mr. Clark said it was doubtless intended that the Governor thus especially elected should only hold his office for the unexpired term, and he moved to add to the 12th section the words "for the unexpired term of the predecessor," which would cover the difficulty, but he withdrew his proposition at the suggestion of Mr. Wurts.

Mr. Browning then called up the 10th section for consideration, which had been amended, and as amended postponed.

Mr. Marsh moved to amend by adding (to the Court of Pardons), the six Judges of the Court of Appeals.

Mr. Jaques moved to strike out the whole section, but withdrew it to allow Mr. Browning to offer the following amendment, viz. to strike out all after the word Chancellor in the first line to the word *may* in the second line, as the term Court of Pardons was inappropriate.

Mr. Schenck thought it would come as well under the Judicial head,

and the Convention had better leave it for the present, as it was evident the members were not prepared to act on this question. He thought the section had better be at once stricken out.

Mr. Allen wished to add the words "and to commute capital punishment," but his amendment was declared out of order.

[G]Mr. Hornblower called for the reading of the substitute offered by him on a previous day, vesting the pardoning power in the Governor and Court of Errors.

[A]Mr. Marsh said he would withdraw his motion to insert the words "six Judges of the Court of Appeals."

Mr. Naar thought that by constituting the section so as to read the Governor shall preside in the Court of Pardons, that will be fixing the duties of the Governor and then this report will be complete. This was not an executive power, but was the power of the people. Let it be so fixed now, and when the report on the Judiciary comes up any addition may be made, which may be thought proper.

Mr. Williamson thought it was an executive duty and as for the idea that it was a sovereign power, all power, whether judicial, legislative or executive was sovereign power emanating from the people. He liked the idea of having this power vested in the Governor and Chancellor and if at a future period it was thought best to add others, it could easily be done. It would be perfectly safe with those officers, as he had no doubt that such gentlemen would be elected to those offices, as the people would have confidence in them.

[G]Mr. Browning moved to amend so as to vest the pardoning power in the Governor and Chancellor. Agreed to.

Mr. Allen moved to insert also, the power to commute capital punishments.

Mr. Allen advocated the motion, and Mr. Hornblower opposed it.

[A]Mr. Hornblower hoped we would not insert in this Constitution a principle whose tendency was in fact to hold out a reward to those who take the life of others. The chances of escape were now abundant, and this would only be adding to them, and he hoped it would not be adopted.

No other Constitution as he knew of contained this provision. The criminal codes were under the control of the Legislatures and this could be regulated by them. If this question was to be brought before the Convention for discussion, he was satisfied that neither a day nor a week would suffice for it, and he hoped the amendment would not be accepted by the Com.

Mr. Allen's amendment was *not agreed* to and a motion made by

Mr. Browning to amend the 9th section so as to correspond with the 10th section was agreed to, having been first amended by Chief Justice Hornblower, so as to limit the power of the Governor to remit fines, grant reprieves, &c. to *ninety days*.

Mr. Browning moved to add to the 1st article the words "who shall during his term of office reside at the seat of Government." Mr. B. said that much inconvenience might arise from the Governor residing elsewhere and the duties of his office might perhaps be neglected.

Mr. Schenck, said that to effect this, the Governor must have a high salary, or none but a wealthy man or a resident of Mercer county would accept the office.

Mr. Hornblower thought it would be sufficient if he resided here during the session of the Legislature.

Mr. R. P. Thompson.—I am opposed to this, Mr. Chairman. Look back at the experience of past years, and see what the experience of those years teaches us. We never have had a Governor residing here, but he has always been here during the session of the Legislature. The very fact, that a farmer, if elected, must quit his farm and his own vocations and come here and reside, will prevent that class of our citizens from becoming candidates for the office. It would be necessary in this event to increase the salary. It was no doubt a very pretty theory to have a government house here, but he was opposed to seeing it as it now was, converted into a boarding house. *The profession* [lawyers?], the people no doubt thought had already had a pretty large share of the office—this perhaps was necessary, from the nature of the duties required of the Governor and Chancellor of the State. In my opinion the people hereafter will choose the Governor from some other class of the community, but I do not see any necessity for compelling him to reside here, and hope this will not prevail.

Mr. Browning. I have no doubt, Mr. Chairman, that others than gentlemen *of the profession*, as a gentleman has termed them, will be elected hereafter to the office of Governor of this State. I hope such will be the case, but whoever he may be, or from whatever profession chosen, he will have high and responsible duties to perform. The office is not created for the convenience of the incumbent, but one constituted having in view the good of the whole people, and when it is cast on any one, he should not reside at any place which would not comport with the public convenience. Suppose a demand is made on the Governor by the Executive of another State for the delivery of a felon, are the officers to hunt him from Cape May to Sussex county? The dignity of the office, and the interest of the State, require that he should

have his residence at the seat of government. I would have the good of the whole State consulted, and if any farmer, physician or mechanic aspires to the office of Governor, I would have him take it with all its honors, but with all its encumbrances. We have property belonging to the State in this city unoccupied, or, indeed, worse than unoccupied, to have it as it now is converted into a boarding house. The Governor should occupy this house without rent, and surely it would not be asking any great sacrifice of any individual to remove to a house rent free, surrounded as it is with beautiful grounds. I hope, sir, the amendment will prevail, as it will in my opinion afford great convenience to the people.

The question being taken on the amendment it was lost, ayes 12, noes 27.

Mr. Parker moved to strike out the 3, 4, 5, 6, and part of the 7th lines of Section 2d., and to insert a provision that the Governor and Council should count the votes at the next election as now provided for by Law for the counting of the electoral votes.

Mr. Hornblower suggested that the proper way for the gentleman to obtain his object was to constitute a board of canvassers.

The amendment was not agreed to.

Mr. Ten Eyck said,

I am almost induced to refrain from offering the amendment I am about to propose, rather than recall the attention of the Committee to a section about which there has been so much discussion, but as at present advised, I consider it too important to omit it. The amendment proposed will come in at the end of the 10th Section, and is as follows:

"But in no case shall a pardon be granted, unless the application be supported by proof of the facts on which the same is founded."

I offer this amendment to prevent inconsiderate and erroneous action by the pardoning power, in whose hands soever the pardoning power may be vested. We do not know as yet how this court is to be constituted, whether of the Governor and Chancellor, of the Governor and Senate, or of the [two] former and the Senate, or in what manner.

Now we all know that the pardoning power has hitherto been very improperly, if not injuriously exercised, and in addition to this we have had the very satisfactory statement of the delegate from Somerset, (Mr. Brown,) showing that pardons are frequently granted on the most flimsy pretexts, and upon grounds entirely inconsistent in the wholesome administration of justice—upon mere domestic considerations, &c.

I have always thought that it partook of the nature of an absurdity

at least, to permit one tribunal, acting without deliberation, without notice, and *without evidence*, to annul the solemn determination of another, proceeding with caution, and in accordance with the strict rules of evidence—evidence, the admission of which is so controlled by reason and philosophy, as in general to lead to correct results.

Our criminal courts have been frequently made a solemn mockery by the proceedings of the Court of Pardons. I myself have known petitions to be circulated contradicting facts which have not only been proved on the trial, but which were not even denied; and these very petitions, thus false and full of misrepresentations, have had their weight and influence. I do not mean to say that the present pardoning power have acted corruptly—they have acted upon the lights and representations before them. They have, however, been repeatedly deceived and abused, and the object of the amendment is to impose *some* check upon the friends of convicts and others interested in their behalf, so as to put an end to false and fraudulent representations in future, by which criminals may be turned loose to prey upon society long before their terms of imprisonment have expired, and the objects of their conviction have been answered.

This, Sir, is the object of the amendment. It will not only put an end to misrepresentations as to what occurred at the trial, but will also prevent abuses in all those cases where applications are based upon matters appertaining to the prisoner and his situation subsequent to the trial. Let these applications be verified by affidavit or by proof in some way.

Mr. Zabriskie said the Convention undoubtedly had great cause for self congratulation at the progress they had made with this Report. It had been carefully considered line for line, and every third line had been amended, and yet after it had passed through this ordeal, the members were going over it again. Really he could not see where they would stop.—With reference to the proposed amendment, he had no idea of encumbering the Constitution with rules for the government of the various officers created under it. He was opposed to the amendment.

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

Mr. Wurts said he was not entirely satisfied with the third section as it now reads, and he moved to amend by striking out the words "Second Tuesday in January," and insert 3d Tuesday. He urged as a ground for this change that the Constitution now requires an annual message from the Governor but according as it now stood, every fourth year the Legislature would be without any message. The old Governor

would not of course send one in, and the newly elected Governor could not, for he would not have had any opportunity of receiving information from the various departments of the government, and in order to secure all the ends which it was desirable to attain he moved to insert third Tuesday, which after some remarks was carried, ayes 22, noes not counted. He then moved to add a proviso to the end of the section, *"that the Governor should not make any appointments or nominations to office during the last week of his term,"* which was carried.

The Committee [G]on motion of Mr. Ryerson [J]rose, reported the same to the convention, with sundry amendments, and were discharged from the further consideration thereof.

On motion of Mr. Wood, it was

Ordered, That the report and amendments do lie on the table and be printed, [A]together with an amendment heretofore offered by Mr. Parker.

[G]The Convention, on motion of Mr. Pickel went into committee on the report on the Judiciary Department, Mr. Stokes in the chair.

Mr. Vanarsdale, the chairman, explained the report, by sections, with much ability and legal learning [see Index for text].

[A]The first clause of the first Section having been read,

Mr. Vanarsdale briefly gave a synopsis of the provisions of the Report in order that members might understand it as they went along with the various clauses. The first paragraph he moved to amend by inserting after the words "Supreme Court," on the 3d line, the words, "and such *Inferior Courts as now exist, which Inferior Courts the Legislature may alter, ordain and establish as the public good may require,*" which was adopted, it being an amendment of verbiage.

The second clause being read, Mr. Vanarsdale said,

The provision just read, Mr. Chairman, changes the Court of Appeals from what it is as now constituted, and perhaps it is necessary that something should be said why this change is proposed. The present Court of Appeals consists of the Governor and Legislative Council, who are elected one from each county, there being nineteen in all, and with the Governor, twenty. The Judges of this Court of Appeals are elective officers, and the Governor is chosen by the Joint Meeting of both Houses. In the Constitutions of all the states which I have examined, I find no provisions for the construction of this Court, similar to that of New Jersey.—The nearest approach to it is in the State of New York, which in some measure resembles our present Court of Appeals as now constituted. The great proportion of them are composed of the Judges of Courts, and not of members

elected by the people to the legislative branch. Mr. Vanarsdale here read from the Constitutions of various states on the subject of Courts of Error and Appeals.

The Judges of this Court under the old act, were elected by the people, and it was thought advisable to leave that body out, as the Judicial and Legislative powers should be kept distinct and separate. The formation of this Council was of English origin, and if not established by the Proprietary Government, it came out with the instructions to Lord Cornbury, and was so continued until July 2, 1776. The idea is borrowed from the construction of the Court of Appeals in England, which is the House of Lords. That Court is composed of a body consisting of the nobility, containing men of intelligence and wealth. But let us see for a moment in what position that Court now stands.

Mr. Vanarsdale here gave a succinct statement of the manner in which appeals were conducted under the English practice, as more recently established by the act passed in the reign of William IV, establishing the Exchequer Chamber. He said (on the authority of Lord Brougham) that when an appeal is carried to the House of Lords, perhaps two of the Lords would sit and hear the argument for the appellant. When that was closed, they would go out, two other Lords would come in and listen to the argument of the respondent, and to complete the judicial farce, when the argument was closed, they, too, would leave and two others would come in, and assist the Judges to make up their decision.

In the change we have proposed we have included all the talents and legal acquirements we had at our command—the Chancellor and the Judges of the Supreme Court; and we have associated with them six other Judges, who may be appointed or chosen, as may be hereafter provided, who may be men of sound sense and possessed of sufficient knowledge of the law. Something of the ancient features of the present Court is thus preserved. In the construction of this Court, if the construction of the Supreme Court Judges should be agreed on as reported, we should always, or nearly always, have three judges in the Court of Appeals who have not sat in judgment on the case, and the Chancellor. They will have the aid of these three judges to make up their decision, and if the appeal is from the Court of Chancery, the six judges thus constituted will have the assistance of the other six from the Supreme Court. This shows the manner of constituting the Court, and the mode in which matters in it will be disposed of in all, or nearly all cases.

There is difficulty in forming the Court of Errors. It is the high-

est Court in the State. It will have generally the disposition of the most important causes, as it is the tendency of litigation in these days to crowd into this Court. Nor is this at all unnatural. It cannot be expected, that where a party has his whole property at stake, and thinks and is advised by his counsel, that the verdict against him is contrary to the principles of law, that he should stop short of this Court. He will go there. He will not rest until he gets there, and with these considerations, the Committee have supposed that this Court should be constituted of the best materials we could get in the state. We hope that what we have presented may prove acceptable to the Convention, and if not, we can only hope, that a better one will be presented.

Chief Justice Hornblower said he did not like the provision in the 7th and 8th lines, that the Chancellor, or in his absence the Chief Justice or any Justice of the Supreme Court, should arrange the terms of office of these six new judges. He thought this had better be left to themselves to arrange by lot or otherwise, as they saw fit, and he offered an amendment to strike out all after the word "(assemble) in the 7th line to word (the) in the 8th line, and insert after the words (six judges) *shall arrange themselves* (in such manner, &c.,)" which was adopted without debate.

Mr. R. P. Thompson said while he regretted to differ with the learned gentleman who had presented the report, he was not satisfied with the construction of the Court of Errors as proposed, and to test the sense of the Convention on this point, he moved to strike out the words (*"and six judges, or a major part of them, which judges are to be appointed for six years."*) Before any action was had on this motion,]the committee rose, reported progress, and had leave to sit again.

The convention adjourned to this afternoon, at three o'clock.

]At three o'clock the convention met, pursuant to adjournment.

On motion of Mr. Ewing,

The convention resolved itself into committee of the whole, Mr. Stokes in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on the Judiciary Department.

[Mr. Thompson's motion was taken up.]

^Mr. Hornblower had hoped that the gentleman who had made

the motion would not persist in it. We must do one of two things—either restore the old Court of Errors, or devise some other. I don't understand the gentleman as wishing to preserve the old Court as now constituted. The effect of his motion, if successful will be to constitute the Chancellor and Judges of the Supreme Court, the Court of Errors. That would probably not meet the views of any other member.

As to the old system, we are drawn into the debate upon it rather hastily, and I am well aware that no one should intrude his views on the Convention without great consideration and reflection, for which I have hardly had time.

If we understand anything in the science of government, if experience has taught us any principle which may be regarded as an axiom, it is that the great departments of government, the Executive, Legislative and Judicial should be kept separate and distinct. The proposition to erect a Legislative body, elected solely upon political grounds, into a judicial tribunal which is to decide matters affecting everything that is dear to us in life, and that go to make up the sum of human felicity, it is to my mind most extraordinary. What is the polar star which directs public sentiment in the selection of our representatives? Was ever a vote given in N. Jersey for a representative with reference to his qualifications as a Judge in the last resort in law and equity, in the cases of wills, inheritances, and the great principles of personal safety, character & liberty? Never, Sir! I have had 40 years experience in the practice of the law, and have had no little share in the litigation of that period, and have been concerned for Plaintiffs and Defendants in Error, for appellants and respondents, where character, and personal rights have been at stake, and where property has been involved to the amount of $30,000. I have now reached that period of life, when however weak, what I say may be considered, it will be conceded that I utter the sentiment of my heart: and I have never been concerned in a case, in which my clients, contrary to my advice, have not procured the services of *out of door counsel,* who have been paid more for their services than I. for mine: and whenever I have succeeded, I have had reason to think, it was rather by their efforts than of mine! and no one who has been at the bar as long as I have will deny it: and if any members of that court who now sleep in their graves could arise, they would sustain me in what I say. Delicacy and propriety forbid me to allude to names or even cases. They have been decided for right or wrong—for time and eternity. Rights have been settled, and wrongs done, which no efforts of out of door counsel can ever repair! It is time, Sir! The Court has become a by-word—and was long since

christened by eminent Counsel, not the Court for the correction of Errors but the Court of high errors! and what else can be expected of men, who, however pure and honest, are elected to carry out political principles? They have familiar intercourse with the people and may be approached by everybody without any delicacy of feeling. Family friendship, prejudices and partialities influence them. I admit that Judges are not free from them. I do not wish to exalt the high office which I have held for a series of years, or to say that I and my associates are above the frailties of human nature! We are not. We are liable to be carried away by extraneous views and feelings. I know it by experience. Our responsibilities have often made me tremble and kept me awake on my pillow, and it has cost me many a struggle when the laws have compelled me to decide against a friend. I will not claim the high prerogative of saying that I have never been influenced by family, political or personal feelings, but I do say in the sight of, heaven, that I have never been conscious of it—and yet we have been compelled to look up to a Court composed of men coming from the midst of warm and heated elections, for our highest judicial decisions!

It is a sound maxim, and has been reiterated by sages in years gone by, that "next to doing right, it should be done in such a way as to satisfy the public." If my life is to be taken away, or I am to be reduced to poverty, let me at least have the satisfaction of knowing that it has been done by Judges of character and competency, and that they have done right. In more than half of the cases which have been decided in that Court for forty years past, I say with boldness and confidently the *causes* have not been tried, but the *parties*, or the *tribunal* from which the appeal has come.

I hope therefore the Constitution of the Court will be changed, and I can conceive of no better plan than that reported. The object is not so much to select men who will be impartial, men of experience and age, as that they shall *not* be selected for their political affinities, or if so that they shall be elected for *six years*, that they shall have some independence and be a little removed from the common platform of every day politicians. I hope they will be men of high character, honorable and trustworthy—above suspicion or reproach, whom no one will dare to take by the button hole, and repeat his case.

Who may we suspect will be selected? Our farmers, mechanics and merchants—men of intelligence, experience and character: and I have made the remark ever since I have been a lawyer, give me a judge of the greatest acquirements in the law—a Stockton, Marshall, or Washington, or one who is no lawyer at all, but full of sound common sense

and integrity of purpose. If I was to be tried today for my life, or was to be enriched or beggared by the result, I would say give me no half made lawyer for a judge—but one of profound ability—at the head of his profession, and who has been favored with nature's best blessing, good common sense, and sound judgment. That I hope will be the character of our Chancellor and Judges, and we always have among us, old lawyers, who have passed the age when they are mere attornies and who will be honored and willing to take a seat in the Court of Errors.

With these views I shall sustain the report of the Committee.

Mr. R. P. Thompson advocated the motion.

Mr. Ogden said—

Mr. Chairman—Although I have the honor of being a member of the special committee that made the report now under discussion, I do not rise Sir, before this body, wedded to any particular article of the report.

Since the result of the election, which returned me to this Convention, I have given the Judicial Department of our State Government, serious and laborious consideration; and as a member of the Committee it has received my undivided attention.

Sir, I must take this occasion to extend to the learned Chairman of the special committee, all praise for the consideration which he has bestowed upon the matter now under discussion. He has brought to its aid his legal learning and acknowledged experience, and he has labored assiduously in the commission, with a single eye to present to the Convention a plan, which in his judgment, will best secure the due and equal administration of Justice, and will meet the views and deliberate requirements of our constituents.

It has been said without the bar of this house, and it may be urged upon this floor, that the people do not ask us to make any alteration in the Court of Errors. This, Sir, is incorrect, so far as my experience extends.

If there is any one branch of the Constitution, in which the reflecting portion of the people desire reform more than any other, it is in the organization of this Court. It is true, that the importance of separating the offices of Governor and Chancellor may perhaps have been more prominently presented in the arguments which were used in support of the necessity for a Convention, but, Sir, a conviction of the imperfections and evils of the present Court of Errors, is deeply seated in the minds of the people, and they expect at our hands a radical improvement of that Court. Sir, I have said that I am not wedded

to any particular article of this report, but unless a better construction of this Court shall be submitted to the committee, I shall adhere to the report as presented.

This is no ordinary or common place matter which we are discussing: It is Sir, the proper organization of *our highest Court* in the *last resort*. There is nothing in which a free and enlightened people feel a greater interest than in the proper administration of Justice, and it behooves us on this occasion to present a system, which will contain as few objections as possible.

In my judgment the Court framed by the Committee has many advantages over the present Court—It will be more permanent, which will secure uniformity in its decision. It will from its construction be more independent. No members of it are to be elected by the people Sir, our Chancellor is to be selected by some appointing power, our Judges of the Supreme Court and other Courts are to be selected by the appointing power—nay, we hesitate to lodge the choice of Surrogates with the people, because they exercise some Judicial functions, and yet, under the old Constitution, we have trusted the choice of the members of *our highest Court* to political popular elections. Sir, this is a *heresy* in juridical economy and ought to be corrected.

Again Sir. It will secure a competent Court, without embracing any parts of the legislature or Executive branches of the government.

I am gratified that my esteemed friend from Salem has not been able to object against the Court as proposed, on any other ground than its probable expense, because I consider that the *cheapness of the system*, when understood, will recommend it to the people.

There are but six Judges who are to receive any pay, and that is to be a per diem allowance while sitting in the Court. The present Court has 19 Judges under pay. I am willing to go before the people on this ground.

The same honorable member from Salem says, that he would prefer that the Court should consist of the Chancellor and Supreme Court *alone*, as he considers that they would be better qualified to settle legal matters on great legal principles. Sir, it is said upon the other side of the question, that the Chancellor and Supreme Court should be *excluded altogether*, and that the Court in the last resort should be divested of members who may be led away by the *technicalities of the law*.

The plan under consideration adopts a medium principle. It introduces into the Court a sufficient number of laymen, who are to be selected from the body of the people, for their integrity, their experience, and their plain, practical, sterling common sense.

The more this plan is considered and examined, the more it will commend itself to a favorable reception; and if adopted, in my humble opinion, New Jersey will have the best Court in the last resort that will exist in the Union. If it shall be proposed to substitute a class of the Senate for these 6 Judges, I shall interpose the unanswerable objections, that they are elective and form a branch of the Legislative Department. Sir, I shall vote against striking the lay Judges out of this Court.

Mr. Parker. Do I understand that the gentleman proposes no substitute for the six Judges, but to leave the Chancellor and Judges of the Supreme Court as the Court of Errors?

Mr. R. P. Thompson, That is it, Sir.

Mr. Ogden. When a party pleads in abatement of the writ he must suggest a better one!

Mr. R. P. Thompson. I am no special pleader here—only a member of this Convention.

The amendment, to strike out the six Judges was not agreed to.

Mr. Ryerson offered an amendment that the Governor, Chancellor, Justices of the Superior Court and the *oldest class of Senators* shall compose the Court of Errors.

Mr. Naar moved to strike out the Governor—agreed to.

Mr. Hornblower objected to the amendment.

The whole force of his argument would remain, that of uniting the Judicial and Legislative branches of government. These Senators are elected as politicians, but never as Judges, except in the case alluded to by the gentleman from Passaic, for their influence on some particular case.

By the amendment, young men may be in the first class of Senators, who are not yet Counsellors, and who did not even pass a creditable examination as Attornies, but who were recommended for their license more from the courtesy and kind feeling of the Court, than otherwise. I have known young Attornies prosecuting a certiorari in the Supreme Court, and hardly able to present their points so that the Court could understand them, sent for to go up stairs in the Court of Errors and there reverse our decisions; and from theirs, there is no appeal this side of heaven except upon a question of constitutional law!

By the amendment as before, no law will be settled by the Court. The case will be decided and that litigation ended; but there have been many cases where the Supreme Court has sustained its former decisions which had been reversed by the Court of Errors although they

had been urged upon them by counsel, and where they could not do otherwise without uprooting all the principles of law, and destroying the foundations of society. The Court decides no law, but each member gives his decision on different principles; and I knew one case in which out of the thirteen members, no two gave their decision upon the same ground.

Mr. Ryerson briefly advocated his amendment. He wished and had always held the opinion that the Court in the last resort should be composed in part of men whose minds were not shackled by the formalities & technicalities of law, and who will not lose sight of the substantial merits and justice of the case.

As to the objection that the Judges might be young men he alluded to the fact that the late Judge Southard took a seat on the Supreme bench before he was thirty, and whose opinions in the case of Montgomery vs. Bruere, though he was overruled by the other Judges, was sustained by the Court of Errors, and has ever since been regarded as sound law.

He feared the appointment of these six Judges, would be given to the Governor and that thus in *nine* cases out of *ten*, they would be lawyers.

He advocated the amendment with ability, and as being in conformity with the wishes of his constituents.

Mr. Zabriskie suggested that we had not decided that our Senate shall be divided into classes, nor whether the Governor shall nominate these Judges or whether they shall be elected by the people. He should vote for the report of the Committee.

Mr. Parker. I had intended to leave this discussion to others, but all the arguments which have been adduced, have been aspersions upon the Court which we have had for 50 or 60 years: the members have been called incompetent and their decisions uncertain. I have never known a Judge of the Supreme Court who has sat 15 or twenty years, who has not been called by some incompetent—and I have known a Chief Justice after being twenty years on the bench, rejected on his re-appointment by the influence of the bar. I never have known a case decided in the Supreme Court, where one party or the other did not say the decision was wrong.

The Chief Justice has drawn a high colored picture of the operation of our Court of Errors—and told us the danger of having young men there. I have never known many young men to be there—but I have known many members of that Court of stern integrity and sound judgment—and who could not be swayed by such influences as have

been alluded to. I know some have listened to their friends out of doors, but they did it without considering its impropriety, in the innocence of their hearts, and with a sincere desire to find out the facts of the case. I have inquired in New York, where the Court is established in the same way, of an eminent lawyer whose name would add force to his opinion, and he considers it one of the safest Courts they have; & I shall move to constitute ours like them, of the *Chancellor, Judges of the Supreme Court and the members of the Senate.*

The gentleman says, the law is never settled by the Court of Errors. We have always heard of the glorious uncertainty of the law. And he who lives to see it settled, will live longer than Methusaleh! I should prefer that the President of the United States should never be a lawyer. All have been so except Washington, and he was better than all the rest.

Why do we all insist in continuing the right of trial by Jury, and say in our bill of rights that they shall, in certain cases, be judges of the law and the fact? Because they are men like ourselves—acquainted with human nature and can judge of our faults with charity.—So in the Court of last resort. I am willing to rely on my fellow citizens, and not on those alone who are learned in the law. He therefore moved the amendment as above.

Mr. R. P. Thompson suggested that this would make 26 Judges—which he thought would arrest the attention of members.

Amendment [not] agreed to.

Mr. Ogden opposed Mr. Ryerson's amendment, because he would not have any part of a judicial tribunal, depend upon an election by the people; and if we appoint the six Judges, as the report proposes it will be their pride, and they will have a motive for preparing themselves for their duties.

Mr. Browning said, he had intended, to take no part in this discussion, but feeling a deep interest in it, I am constrained to change my determination. I am opposed to the amendment proposed by the gentleman from Sussex, and if I can influence a single vote, shall feel myself amply repaid. I beg indulgence of the committee for a few moments.

Let us not in organizing this important Court of *last resort* and in attempting to infuse common sense into it, take leave of our own common sense. Let us act in this matter as in the ordinary affairs of life. Should one of us have a leg broken or a member of his family become suddenly ill, would he apply to a *horse-farrier* or a blacksmith for aid? or would he send for a skillful surgeon or physician, who had

made the human system the study and practice of his life? If his watch should be broken, would he employ a *tinman* or a watchmaker to repair it? Our everyday habits answer these questions. And sir, if we desire to know what the law is, should we apply to one who never looked into a law book, or to one whose whole life has been devoted to the study of the science and practice of the law?

Justice is to be administered *according to law;*—not according to the whim, caprice or judgment of the judge. It is a fundamental principle of our Government, as old as *Magna Charta* that no one shall be deprived of his life, liberty or property—but *according to the law of the land.* To erect any other standard of Justice than this, would be tyranny. The law must be our guide. Genuine civil liberty consists in the faithful administration of Justice, according to fixed and settled rules of law.—Any other rule than this would expose us to the weakness or wickedness of a single man or act of man—would be despotic —nay despotism itself. If then the law is to be our guide, should we go to them who know the law, or to them who know nothing about it?

What a burlesque upon an appellate Court. A suit is instituted in the Common Pleas—a writ of error is brought to the Supreme Court. After solemn argument of learned counsel, the Court distinguished for learning and integrity, make a decision; and this decision is now to be carried into a Court of Errors, composed in part, (as the case may be) of the same Common plea judges who decided in the first instance. That is, the cause is to be finally reviewed and settled by the same or similar judges who determined it in the first instance.

But Mr. Chairman, I have a graver objection to the amendment than this. It proposes a direct connexion between the legislative and judicial branches of the Government, which in my humble opinion, should be kept distinct. Any connexion between the different branches of Government is improper. For the same power to make the law and expound it is tyranny. It is equally so whether the power be in one man or a set of men. (Mr. B. here read from Jefferson's notes objecting to the old Constitution of Va. which made the Judges dependent upon the Legislature for support, and condemning [it] as so far tyrannical.) If, Mr. Chairman, it be despotic to make the judiciary dependent upon the Legislature, it is much more so to make them one and the same—or partly so. When the same power makes and expounds the law, there is no security.

I submit, Mr. Chairman, that no connexion should exist, between the several branches of Government. I hope to see such an article introduced into our Constitution. I find it in several of the State Constitutions. Let the powers of Government be kept separate, and let no individuals belonging to one branch participate in the others. I have no belief in universal genius—one man excelling in everything. I hope in my heart the amendment will not prevail.

Mr. Naar advocated the amendment.

Mr. Marsh opposed it, and advocated the report as being economical, [redacted]g upon the old system of $2000 per annum.

Mr. [redacted] moved an amendment to make the Court consist of the Chancellor and the whole Senate, which he advocated.

Not agreed to.

Mr. Ryerson's amendment was lost.

Mr. Mickle moved to leave the Court as it was before. He thought that was safest, and the people didn't want it changed. It has always been objected that the Chancellor reviewed his own decisions, & now you will send half a dozen more to do the same thing. He did not want the Judges of the Supreme Court there at all. The gentleman from Salem told us the other day about a pretty woman crying her husband through the Court of Pardons. Can't she cry him through the Supreme Court sooner? At any rate she will be more apt to give up in going over *eighteen* than *six!* (Laughter)

Mr. Hornblower replied to the argument drawn from the trial by Jury, and showed that there was no similarity between that, from which there is an appeal, and that of the Court of last resort, from which there is no appeal.

Mr. R. P. Thompson should go for the report as his own amendment had been rejected, and none other suited his views, as well as the report.

The amendment to leave the Court as before constituted *was lost* by a very large majority.

The remainder of the article was agreed to.

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

On motion of Mr. J. R. Thomson,

The convention adjourned till to-morrow morning, at nine o'clock.

Wednesday morning, 5th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Deruelle.

On motion of Mr. Ryerson,

The convention resolved itself into committee of the whole, Mr. Stokes in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on the Judiciary Department.

Section Second—Mr. Vanarsdale briefly explained the objects of the section, and amended it by adding the words, *according to evidence,* on the 3d line which words had been accidentally omitted.

Mr. Allen thought that where a bare majority only was required to pass a law, there should not be less than two thirds to try and convict a person. A majority of a bare quorum in the Senate would only be seven members, less than an actual majority and surely in cases of this importance they should not pay less regard than upon the passage of some unimportant law. It should either be a majority of the whole number of persons elected, or two-thirds of the whole number, and on his motion the word "present" was struck out in the fourth line.

Mr. Child moved to strike out two thirds in the same line and insert three fifths, which after a few remarks in opposition from Messrs. R. S. Kennedy, Parker, and Browning was not agreed to.

Mr. Parker then moved to insert the word *all* in the 4th line after the words *"two thirds of."* Agreed to and to substitute the word *impeachment* in the 1st line for *impeaching,* which was agreed to.

Mr. Ryerson moved to add to the beginning of the 1st line the words *"a majority of all the members of."*

Mr. Browning suggested that that would hardly be sufficiently explicit and he moved in lieu thereof to add after the word Assembly *"by a vote of the majority of all the members,"* which was agreed to.

Mr. Browning moved to strike out that part of the 9th line, declaring that an officer while impeached shall be suspended from exercising his office until acquitted. As it was, he thought it was only leaving open an easy mode of getting rid of an officer of good character and qualifications who might become obnoxious. A bare majority might present articles of impeachment and this could be easily protracted one, two or three years, and thus occasion great inconvenience to an innocent and deserving person. He insisted that in cases of impeachment, as in cases where a party is indicted, the party should be presumed innocent

until proved guilty.

Mr. Ryerson enquired if in case the Treasurer of the State had misapplied the public funds and was impeached, would the gentleman have them still in his custody.

Mr. Browning said that in such cases, the fact of his being kept in office, would ensure a speedy trial. He would have to give security and the State would be secured.

Mr. Parker objected to putting provisions in the Constitution founded on presumption, belief or probability. The Legislature would only prefer impeachment on good grounds, and he would not suffer any thing to be put in this instrument which would imply that they would for party ends or purposes impeach any individual.

Mr. Browning's amendment was not agreed to.

Mr. Naar moved to strike out all that part referring to the manner in which certain officers shall preside and to insert, "in all trials on impeachment the Chief Justice shall preside. But when the Chief Justice is tried, the Chancellor shall preside but in all such cases, the Chief Justice shall only vote when the Senate is divided on preliminary questions," which was not agreed to.

Mr. Dickerson moved to strike out the 5 6 7 and 8 lines, (just moved to be amended by Mr. Naar) which was agreed to ayes 21, noes 14, and by this amendment the Chief Justice and Chancellor form no part of the Court of impeachment.

Section 3—Mr. Ryerson moved to amend by adding thereto, "and the Legislature may provide for one or more vice Chancellors, as the public good may require." This however he withdrew to allow Mr. Jaques to make a motion to strike out the whole of the section, which he did supporting it at some length.

Mr. Jaques said—

All the States in the Union except 5 or 6 are without Courts of Chancery, and we hear no complaint. But in States where such Courts do exist we hear loud complaints of their delays, and expenses.—What difference is there between law, and equity? I have been under the impression until lately that law or justice and equity were one and the same; that the administration of law was the administration of equity, but I now understand that the gentlemen of the Bench and the Bar make a distinction, and hence the necessity of a Court of Chancery or Equity. Is it true that we are compelled in order to obtain complete justice to apply to a Court of law to obtain a certain portion of our rights, and then to go to Chancery to recover the other or equitable portion? Why not unite them together and let the same Court, the

same power dispense justice in full? A union of this kind would most assuredly save much time, delay, and expense—and it would restore to the people the right of trial by jury, of which the Court of Chancery in this State has in part deprived them.

Again I ask why have two courts to transact the business which one could perform and that more acceptably to the people? But we have a number of Courts besides the Court of Chancery. We have a Court of Errors, Supreme Court, a Circuit Court, a Court of Common Pleas, a Justices Court beside Criminal and Orphans' Courts. Now are not these enough to mete out justice to the good people of this State? Most assuredly they are; they may want reforming and improving. They ought to be simplified, stripped of their mysteries, of their technicalities, of their special pleadings. Mr. J. in concluding referred to the loud and general complaints in New York, where the Chancery courts have proved burdensome, and to the better condition of things in Pennsylvania which has no Chancery.

This was not agreed to, Mr. Jaques alone voting in its favor.

Mr. Ryerson then renewed his amendment with the addition of giving them co-ordinate powers, salaries and jurisdiction with the Chancellor and allowing appeals to lie from thence to the Court of Errors.

Mr. Child had no objection to giving the Legislature the power to create these offices if required for the public good, but why not stop there, and allow the Legislature to regulate their salaries, term of office &c.

Mr. Ogden opposed the amendment. We have he said made provisions for future amendments and if these offices become necessary the Legislature can in one or two years pass a Law creating them. It looks now like carving out a new set of offices which in my opinion will prove a serious objection to the adoption of the Constitution. Mr. Ryerson withdrew his amendment.

Mr. Hornblower moved to strike out all after the word (receive) in the 2d line, and insert "a salary which shall not be diminished during his continuance in office."

After some desultory remarks Mr. Hornblower withdrew his proposition and Mr. Parker moved to add "Who shall receive compensation at stated times, which shall not be diminished during his continuance in office."

Mr. Dickerson moved to insert *"increased or"* which was lost, and Mr. Parker's amendment was agreed to.

Mr. Parker then moved to add to the section—"The Legislature

may provide for the appointment of an assistant Chancellor or Vice Chancellor or may vest in the Supreme Court or in an inferior Court part of the powers of the Chancellor."

Mr. Randolph opposed this. It was discussed in Committee, and the objection there urged was that it would seem to be a sort of invitation for the Legislature to gratify some party favorite or friend by appointing him to the office thus created.

Mr. Hornblower. I concur in the objection to this amendment. It is in fact holding out professions of making offices for which we have no idea we shall have occasion. If in the progress of increased population, and increased litigation, the duties of the Chancellor should become too onerous, we must depend on the good sense of the people and the Legislature to meet the emergency. I don't want to alarm the people by holding out to them the idea here conveyed, that the Legislature may appoint a Vice Chancellor for the sake perhaps of gratifying political friends or favorites. Nor do I like at all the project of vesting the common Law Judges with equity power. It is true it is the case with the Judges of the Supreme Court of the U. S. but the incumbents on that bench are gentlemen sufficiently learned in the law to be competent to decide on equity as well as common Law cases, but there it is not considered that their duties in Common Law cases are so onerous as to prevent them from attending also to their equity duties. Many who are fully competent to sit as Common Law Judges are not well qualified to execute the duties of a Chancellor. It is a mingling of the jurisdictions, and in some of the States where they have no Chancellor, when you go into their Courts, it is hard sometimes to tell whether the Judges are discharging the duties of Common Law Judges or of a Chancellor.

Mr. Parker again advocated the amendment contending that it was no valid objection to the provisions that the officers might not be immediately wanted.

Mr. Williamson. I am satisfied this is an unnecessary provision, and will not be required for at least one generation to come. Why then place in the Constitution a power of this kind? And as for giving equity jurisdiction to the Supreme Court, every one knows now that they cannot get on with all the business they have there. It is entirely unnecessary, and if the gentleman who proposed the amendment wishes to defeat the whole constitution he could not have selected a better method than to engraft this provision on it.

Mr. Vroom concurred in the opinion that the amendment was unnecessary and the question being taken it was *not agreed to.*

Section 4 was passed over with a brief explanation from Mr. Vanarsdale as to its intentions and objects.

Section 5—Mr. Vanarsdale moved to amend the 1st line, by adding thereto the words "The Legislature may increase or lessen the number of said Justices."

Mr. Ryerson moved to amend by substituting for the whole section as reported, the following: "The Supreme Court shall consist of the Chief Justice and four associate Justices, but the number of associate Justices may be increased or diminished by the Legislature provided there are never less than two."

Mr. Hornblower moved to postpone the subject for the present; he should like to consider well upon it. He however withdrew his motion to allow Mr. Vanarsdale an opportunity of stating the grounds taken for presenting this portion of the Report as it now was before the Convention.

Mr. Vanarsdale's amendment having been agreed to, he said, the addition of one Associate Justice to the present number Mr. Chairman, which is here provided for, is founded on the idea that there are not now Justices of the Supreme Court enough in proportion to the amount of the business carried on. From all the information I have received the business in that Court is accumulating and burthensome to suitors. The causes are delayed a long time before the Justices can hear them, and it was thought best to devise some mode by which the public might be relieved. In order to do this effectually it has been thought necessary to add one more Associate Justice. One new county has been created, and that is one increase of the business, as the Judges must attend there, and two additional terms are provided for, and that is another increase to the business—but the addition of one Justice it is contemplated will be sufficient for the management of the increased business.

With reference to the increase proposed in the number of terms, and the proposition to hold different Courts in different places, it is proper I should say something. In the first place, let me call attention to the peculiarities in the location of the State. We are now located between two great commercial cities. East Jersey with her agriculture, her manufactures and her commerce will always go to New York, and West Jersey will go to Philadelphia, and the situation of the State is such that the people of East and West Jersey are as it were distinct people, having nothing in common with each other. I do not mean to say that there are not cases which form an exception.

They are all brought to the centre of the State to transact their

business, and here we are in each other's way. The professional men of East Jersey, are not considered as the proper gentlemen to carry on the causes of West Jersey, with the exception, perhaps, of our venerable chairman, whose great length of service and experience at the bar qualifies him for conducting the cases of either part of the State. The consequence is, as I said, we are in each other's way, here, and that is an injury we are entitled to have redressed. The object of constituting this Court as proposed, is to separate the causes and the parties, so that they will not be in each other's way, and to give to parties in one section of the country the opportunity to have their business transacted there. It is a natural difficulty in the State, and would it not be expected that the Constitution should provide for it? In many States they have found it necessary to establish the places and times of holding their Courts, and I could enumerate several who made this provision for their Court and their seats of government. Virginia is divided by the Blue Ridge of mountains, and East and West Virginia are very differently circumstanced, especially in one item. In the eastern part they own some 300,000 slaves, while in Western Virginia perhaps there are not more than 50,000. It became a subject of protracted debate in their convention as to the qualification of an elector, or rather, a voter. If the population of Western Virginia continued to increase as it had done, it would not be long before they would have control of the Legislature and by laying a tax upon slaves, they should throw the whole burden of the State upon East Virginia, and now they hold their Courts on the Eastern and Western side, and the great injustice of compelling numbers to travel from one side to the other is avoided.

Another case is that of Maryland, which is divided by the Chesapeake Bay. There too is natural difficulty. It would be manifestly unjust to compel the people to cross that bay to transact their business with the Courts, and they are now held on the east and west side of it. Where our business is so radically different and it is here, why should not East and West Jersey each have a part of this Court? It will not have the effect to strip the middle of the state of their rights; it is a system founded on the most perfect equality, and for that reason I invite the gentlemen from the middle section of the State not to oppose it. If this should not be accepted, and it shall turn out that the Courts are not held at all in the middle district, they will have by their opposition furnished the answer to their own complaints. It is very easy to see that the strength of the two sections could compel the Courts to be held half the time in one, and half the time in the other

section. But by this arrangement a just proportion is observed. Nor does this provision for holding the Courts in different places originate here for the first time. In Pennsylvania they are held at Harrisburgh, Pittsburgh and Philadelphia. In New York it was held in Albany and the City of New York,—Utica was then in the woods. Now it has grown up into an important city, and one term of the Court is held in New York, one in Utica, and two in Albany. This is the adaptation of the Courts to the wants of the various sections of the State. Inconveniences I dare say may, and will grow out of this arrangement, but I hear of none more serious than that occasionally a notice is given at a distant place. The general operation of it is, that each section of the country transacts business at the Court, held in that section—and thus it would be here. If two terms of the Court are held in East Jersey two would also be held in West Jersey, and in the middle of the state also. There may be too cases of partial inconvenience arising. The difficulty of having judgments entered up in the various Courts is obviated here, for the Clerk of each Court is required to transmit every two weeks to all the other Courts, transcripts of the judgments which may be entered up in them. Suppose this is not adopted, what is to become of the provision for the Circuits? Some want a prerogative Court and want 3 Judges in that and 3 in the Supreme Court. We may it is true get a good prerogative Court, and get the Judges to attend to the Circuit Courts. It is best to keep the Justices of the Supreme Court at the Common Law and attending to Circuits. If this is not done you may establish a Court of co-ordinate jurisdiction, but I have to learn why such Courts are necessary when by dividing the Judges of this Court you may carry on all the business in the same Court.

(Mr. Vanarsdale here gave a brief history of the English Courts and resumed.)

Instead of establishing Courts of co-ordinate jurisdiction this plan limits the number of the Justices to hold the Courts, and leaves three to attend to circuit and other business. As the Court is now constituted, we often find the whole five Judges, sitting to hear common motions, and their time is often consumed in hearing motions where there is no opposition. It is no more necessary that the whole five Judges should attend to such business than that five Doctors should attend one sick man. A distinction in the duties is material. In litigated motions one is often enough and in cases of difficulty three are plenty, and allow one of the Judges to be employed in this duty. But this is subject to this objection, that while one Court is giving judgment one way on

one case, the other may be giving an adverse judgment in a similar case. But this may happen equally in Courts of Co-ordinate Jurisdiction as well as in this, and if so it does not form an objection which lies against this arrangement of the Court. We should have but one Court to manage all the business and error would be from it to the Court of Errors.

But again, if this is not approved of we have lost our materials for a Court of Errors. In most of cases there would be three Judges engaged, and we should have three left for the Court of Errors. But if not adopted, in writs of Error from the Supreme Court, all the Judges are disposed of, and we lose as i said one of the best materials for the Court of Errors.

I have looked into the history of the Courts in N. Jersey, and I find that the Court of Common Right was established in 1682 and continued until the surrender of the Governor to the Queen of England in 1702. [As corrected later by Vanarsdale. The source quoted this paragraph slightly differently.] It was first held at Elizabeth Town, and then at Amboy. In 1723 a new ordinance provided that the Courts should be held at Amboy and Burlington. In 1725 this was repealed and another [was adopted], establishing courts at the same places. The jurisdiction of this Court was from the Courts of Exchequer, Common Pleas and King's Bench, [in England] a very large power. In 1734 another [ordinance] established Courts at the same places with like Power. In 1764 I find the last ordinance respecting our Supreme Court which probably continued until the adoption of the present Constitution in 1776, when the Courts continued to be held at Amboy and Burlington until 1778 when the Court at Amboy for the safety of the Records was removed to Hillsborough, in Somerset County. Soon afterwards the enemy paid a visit there, and in 1779, the Court and Records were removed to Trenton where they have remained ever since. One reason why the Courts were broken up in East and West Jersey is to be found in the state of the times. It is a maxim that where arms prevail the gown must yield. The country was then in a state of war. The people had neither time, opportunity, nor desire for litigation then, and when Courts were wanted, they were easily held in one place.

With regard to East Jersey, I can state that this mode would afford great convenience. Say the Court is held at Newark, and the parties having business there from all sections, could easily reach there in time for the opening of the Court even if it was 9 o'clock, and having transacted their business they could reach home again in the same

afternoon. The business of East Jersey I may safely say comprises three-fifths of the business of the State, taking in New Brunswick and the Eastern District. The trouble of coming to Trenton would not form so great an objection if we could have our business transacted when kept here, and if I had a cause to argue and was offered $50 to come to Trenton or $30 to attend to it in the same section of the State where I live, I think it would be to my own interest and that of my children to take the $30.

One other plan is, instead of changing the terms of the Supreme Court, to insert the Circuit Court, with increased powers. That would be liable to some difficulty. Suppose a professional man receives 3 or 4 causes in New Jersey, and the plaintiff and defendant reside in different counties. If he did not bring all his actions in the Supreme Court, he must part with his cases and give them to different lawyers in the various counties. Then there is another difficulty as to the change of venue. If the action is brought in a county where the party does not reside, and where he ought not to bring it, how will you get it out; and if large cases are brought before the Circuit Court, the party will have lost the benefit of a trial at the bar. After a few additional remarks, repeating some of the reasons why this mode should be adopted, Mr. Vanarsdale submitted this as the plan best adapted to the wants of the community, and if it was not adopted, he only hoped the Convention would find a better one.

Mr. Ryerson—I have offered my amendment as a substitute for the whole of the 5th section. In the 1st place I think the plan proposed by the Committee of appointing an additional Judge unnecessary. It will add the expense of two additional Clerks of the Supreme Court, and the people will say it is only for the creation of fat offices.

Another, and very serious difficulty may arise in the purchase of landed property. A man cannot have his title perfected till he has sent to each of these offices to search for judgment, and in the two weeks which elapse before the transcripts are sent from one Court to another, a judgment may have been entered which affects the whole property. I think, sir, no such change as that contemplated by the report has been called for by the people, and we shall adopt a safe rule, if we make no change which is not called for. My amendment will leave it in the power of the Legislature to settle this. It may be, it is true, a matter of inconvenience to members of the bar, but not to the people.

Mr. Ryerson's amendment was adopted, ayes 28, noes not counted.

Mr. Clark then offered as an addition to Section 5, a provision [as corrected the following day]:

The Supreme Court shall be an appellate court and a court of errors upon all judgments obtained, points reserved, and cases abated in the circuit courts.

The circuit courts shall be courts of original jurisdiction in all cases at law, to be held in the respective counties of this state by one of the justices of the supreme court; and every final judgment of this court may be docketed in the supreme court, and shall operate as a judgment obtained in the supreme court, from the time of such docketing.

Which was ordered to be printed.

The committee then proceeded with the 6th Section providing for the Orphans' Court.

Mr. R. S. Kennedy moved as a substitute that the Orphans' Court should be held by any three Judges of the Common Pleas and insisted that there was no necessity for a change or for enlarged powers.

Mr. Browning said, this Court has long been the subject of grievous and well founded complaint. It was really the most important court in the State, as the title to all the land in New Jersey passed under its supervision, and the Judges of this Court should be the most competent and learned that could be procured. The day of reckoning he said would come and the lawyers already saw the harvest growing which they were to reap from the manner in which business had been conducted in that Court.

Mr. Hornblower opposed this amendment at some length, and cited several cases where the most manifest wrong had been committed upon orphans through the instrumentality of this Court. He insisted that the Court ought to be broken up, and re-established on such a footing as would afford something like security.

Mr. Zabriskie without advocating the amendment replied to the several remarks made concerning the Court, vindicating his own course while a Surrogate, but acknowledging that he had seen many things which were unjust and oppressive.

Pending the question the committee rose, reported progress, and had leave to sit again.

On motion of Mr. R. P. Thompson,

The convention adjourned to this afternoon, at three o'clock.

At three o'clock the convention met, pursuant to adjournment.

On motion of Mr. Ewing,

The convention resolved itself into committee of the whole, Mr. Stokes in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on the Judiciary Department.

[G]The question before the committee was on Mr. R. S. Kennedy's motion to substitute for the plan of the report the old Orphans' Court.

[A]Mr. Randolph explained the object of the section reported by him to make a Justice of the Supreme Court a constituent part of the Orphans' Court. He considered the subject of the Orphans' Court one of the most important questions that will come before us. In the Supreme Court there are but few suitors, and they are heard by Counsel; but in this, cases are heard *ex parte*. The business is that of widows and orphans, and there is not here and there an isolated case, but the whole community are immediately concerned; and once in 30 years the whole property of the State passes in some way through the Orphans' Court.

When we speak of the evils in the Court we do not mean to imply any censure of the Judges; they may be honest: but questions come before them, which require great legal investigation and learning—questions of administration—of civil law—settlement of accounts and charges of interest. They have the right to dispose of the lands of minors—to make partition & grant dower. In matters so complicated and extensive, they cannot be expected, to be able to dispose of them with perfect satisfaction. The delays too of coming to the Supreme Court, are great, and in some instances where parties get a correct decision they might better have taken up with a wrong account. The errors may be with the Surrogates. They hear no counsel and have no minutes. The decisions are marked on the back of a paper, and when the title comes to depend on that, it is lost.

Another difficulty arises from the number of the Judges. Either none are there or else there are many who are procured to be present, for the purpose of giving some particular decision. If the question is a local one, all the Judges from that part of the county will be present. At other times it is a flying Court. One set of Judges will hear the commencement and another the end of a question.

These are some of the difficulties in the present system which we must obviate, if possible.

One plan was to appoint two Prerogative Judges in each county. That was objected to, as creating two new salaried officers. Another, to make the Surrogate, the Prerogative Judge. That received no favor, because it was said he must be a lawyer.

Mr. R. then offered his substitute as follows, which he explained and advocated:

Article 6. The Orphans' court and the court of oyer and terminer and general jail delivery, in each county of the state, shall be held by one of the justices of the supreme court and the judges of the inferior court of common pleas appointed under this constitution, or by any three of them.

Mr. Ewing desired to submit a few observations drawn from many years' experience as one of the Judges of the Orphans' Court. I have no particular theory, nor any interest or prejudices on the subject. All admit that a reform is needed—and this report contains the result of the labors of the most excellent and respectable Committee who reported it. I confess I am not entirely satisfied with it. I desire to make no radical changes in the Constitution, but such as are conservative and necessary. I think if we add to the present Orphans' Court one of the Judges of the Supreme Court, but little will be gained by it; but if we decrease the number of Judges to *five* or *seven* it will be a great advantage. Our sympathies have been excited by the Chief Justice, in his allusions to the present Court. Now I desire to know if there is any tribunal under heaven whose judgment, and decisions give entire satisfaction? One advantage of the present system is, that the Judges have a knowledge of the estates in their county, and of the persons who are proper to be appointed as Guardians, Administrators, Commissioners &c.

In Cumberland co. we hold our Orphans' Court on the Monday before the term of Common Pleas commences. Our proceedings are all held in open Court. The people who have business all attend, and the business is done with great care—but much difficulty arises from the great number of Judges.—We have about thirty in the Court, and from ten to twenty are on the bench. They attend the Orphans' Court but never at other times. How can their decisions be satisfactory to the people? But it will be different if the number is diminished, and they are not appointed as a reward to political partizans. Then I hope we shall have Judges, of the highest standing. But if we are to have a Justice of the Supreme Court, unless he lives as now, in the county, he must leave his home on Sunday. The business is oftentimes unimportant and it will create dissatisfaction and jealousy among the other Judges.

But I will go farther. I am not willing to ascribe all the talents and virtue to the members of a particular profession. We feel that we have some talent and respectability, and cannot yield all to them. I have

a high respect for lawyers and Judges—but also for the honest yeomanry of our County. I challenge—the universe, I was going to say—but I will say the U. States to produce a people of better character or of higher standing. I am a native of the County and have a right to speak for them and will do so on all proper occasions.

Well the Circuit Judge comes. To whom will he look for the information which he needs? Will it not be to the County Judges? Certainly: and they know more of the county and are better able to make these appointments than any others. Then as to the accounts. We have or are supposed to have competent Surrogates. They state the accounts, and the Judges hear both sides of the question, and the law concerning it, and their decision will doubtless be correct. I shall be satisfied when their number is reduced, and the Legislature shall find out that it is not their interest to appoint mere politicians. This sending down of a Circuit Judge will be looked upon with jealousy and cause prejudice, I fear, to the Constitution we are about to frame. I have had great experience as to the operation of the old system, but I have not seen the widows and orphans wronged as has been mentioned. Errors may have been committed. That is the lot of human nature, but I would be willing to trust every thing that is dear to me and to my family to their discretion. I desire to see the Court as perfect as human intelligence can make it; but I think we are going too far. We are doing that which should be left to the Legislature. The people view us and our proceedings, with great caution. I want to frame a constitution that will be acceptable to them, and I believe that if we confine the number of Judges to five or seven, we shall satisfy them and place the Court where it will satisfy the widows and orphans of the State whose interests are involved in their decisions.

Mr. Hornblower desired to make a declaration, induced by the remarks which had been made. He solemnly declared that in any thing he had said he had not alluded to any of the gentlemen before him who had been Surrogates or Judges. The evils grew out of the system—and he did not doubt but that we should be better off, if any one of those persons who heard him, composed the Court instead of the twenty Judges.

We have been told, and I know it is so, that in several counties the Orphans' Court is held on Monday. By what right? The law says it shall be held at the same time as the Common Pleas—and all their proceedings on that day are *coram non judice*. I have expostulated with the Judges on this point, but to no purpose.

He was in favor of the amendment of the gentleman from Warren

to leave the Court as before but limit the number of Judges. He thought the adoption of a different system should be left to the wisdom and experience of the Legislature.

He objected to adding a Justice of the Supreme Court, because there is already jealousy enough of lawyers and judges. We have been eloquently told, that virtue, and integrity and talent is not the exclusive property of any profession, and I honor those who have said it, and I beg pardon, if any thing I have said has been understood to the contrary. We have men in whom I have confidence and whom I revere—who have never read Blackstone or opened the pages of a law book.

I have another objection—to putting this onerous burthen on the Justices of the Supreme Court—They will have no time to investigate the titles and every thing which concerns estate after the civil and criminal business of the term.

Another objection is that it implies a censure or want of confidence in the other Judges. It is merely saying to them, we have put another Judge over you to keep you straight in your business.

Mr. Randolph explained that his amendment did not require that the Judge should be always present, but that he might be called in when his advice or counsel was necessary.

Mr. Hornblower. Then it will be ineffectual. He will never go in. If the Legislature will divide the State into three or four districts, with a Judge of Probate and a clerk in each, the fees of the office will pay them and the evils will be remedied.

Mr. Marsh advocated Mr. Kennedy's amendment. He thought the difficulty was not that the Judges are incompetent, but that there is no inducement for them to give that time and attention to their duties which is necessary—and he submitted whether it would not be well to provide by a constitutional provision for suitable compensation to them. [He] said that the judges of the Supreme Court had already as much labor as they could undergo, and that they could not attend to the duties of judges of the Orphans' Court. He should, therefore, be in favor of the amendment of the gentleman from Warren, with the hope that provision would hereafter be made to remedy the evils in the present system.

Mr. Vroom was not friendly to making one of the judges of the Supreme Court a part of the Orphans' Court. He should vote for the amendment of the gentleman from Warren, under the hope that the Convention would adopt some wholesome measures in relation to the number of county judges.

[The Advertiser gives the following version of Vroom's remarks: He should not vote for the amendment of the gent. from Warren, saving to himself the right to take a different view of it, if the Convention shall decide as to the best mode of appointing Surrogates, and as to the limitation of County Judges, in a different way from that which he preferred.]

Mr. Green considered this one of the most important questions before us. The tribunal is one which reaches every individual in the State, those who are defenceless, without counsel, and without the means to take care of themselves. In other Courts, the suitors are voluntary parties. Here it is otherwise and the Court affects the whole property in the State once in twenty years. It is an exceedingly important subject, and has been so regarded for a very long time. Years ago Chief Justice Ewing was appointed to revise the system, and after devoting much time and applying all his energies to the task, he gave it up in despair, under the impression as I believe, that the system had radical defects in it which could not be cured. After him Chief Justice Kirkpatrick attempted it, but died before his work was accomplished. Since then, a gentleman now living, has attempted the same thing and made elaborate reports to the Legislature at great expense, but which have never been acted upon. The subject has attracted the attention of every body for twenty years or more, and nothing has yet been done.

As one of the members of the Committee who made the report, I feel bound to say that I do not entirely approve of it. After considerable reflection and twenty years' practice in the Orphans' Court and seeing and bewailing the evils that have been mentioned I do not believe the addition of a Judge of the Supreme Court will remedy them. The examination of the accounts of large estates will take weeks. The Judge will never have time to do this and discharge his other duties. He will have to trust to the Surrogates. The gentleman from Middlesex proposes to avoid this by allowing him to sit in the Court or not as may be necessary. The objections to this are that it should be settled what the court is, and that he will never attend at all, and that while we take a step that will create prejudice we shall gain nothing.

There is great force in the suggestion of the gentleman from Cumberland. There have been, and are now on the bench of the Common Pleas men of standing and integrity, and who are competent to discharge their duties. But the fault is in the system. You might have fifty Solons on the bench and never get a correct decision. There is

no responsibility. One Judge hears the beginning and another the ending of a cause. My vote (I concur with the gentleman from Somerset) will be affected very much by the decision as to the appointment of Surrogates. Where you have good Surrogates, the accounts will be correctly settled. That must rest with them, and when they are what they ought to be, you will hear but little complaint. I know the system has radical defects, and that it is the opinion of many of our best men that these defects cannot be remedied, until you put on the Surrogate all the responsibility and appoint a competent man.—The Judges can't examine the accounts, and you may make the bench in any way you please and you cannot remedy the evils till you put one man there. But from what I have seen and heard I fear this plan cannot be adopted. It is said that the Surrogate would have to be a lawyer. I do not think so. We want a clear headed and intelligent man and above all, one of integrity and virtue. There have been and are now such men among us.

But with this conviction the plan of the gentleman from Warren is probably as nearly perfect as any we can agree upon. Some parts of the amendment of the gentleman from Middlesex I regard with favor. There are now too many Judges. I have known a case, in which an executor, himself a Judge, presented his account to three Judges. They said, we can't allow it.—The commissions are too large. He then went to three other Judges, and they allowed it. This is a monstrous evil.

The great difficulty is, the number of Judges, their sudden change, and the want of adequate compensation. Alter these things, and you get rid of a great share of the evils.

Mr. Randolph replied. He wished, if we could not remedy the evils entirely, to take one step toward it.—The addition of the Judge of the Supreme Court will do something toward it. It will systematize the Court—give it a head—furnish legal advice when necessary—and cause the adoption of rules to govern it. We have hoped the Legislature would provide a remedy—and hoped till the heart was sick. And now the people look to us: and I believe that one prominent reason why they have sent us here was to remedy these evils—not to say iniquities.

Mr. Naar advocated Mr. R's amendment. He had felt the difficulty when upon the bench of not having competent legal advice—when there were as many different opinions as Judges. He thought it would save expense to the people, as they would then be satisfied with the decisions, and not carry them up. It might lessen the business of the

Supreme Court and of the lawyers, but he believed it would benefit those who are most interested.

Mr. Randolph's amendment was *Lost*.

Mr. Kennedy's (leaving the Orphans' Court as before) was *Adopted*.

Mr. Randolph offered his substitute for Article 7th—as to the number &c. of Common Pleas Judges [see end of Judiciary Committee report].

Mr. Browning offered an amendment, that there shall be no more than five judges in each County after the commissions of the present ones shall terminate.—One shall be appointed in each year, the commission to date on the 1st of April, except in case of vacancy, which shall be only for the unexpired term and commission to bear date when issued. Mr. B. explained that it was based on this idea, that they should be reduced to five in number in each county and hold office as now, for five years. One shall be appointed, and one pass out each year. The commission of the first one to take effect the 1st of April next and so on. So that at the end of five years, when the Commissions of all now in office will have expired, there will be but five and so on forever.

Amendment *Adopted*.

Mr. Parsons offered an amendment to the 8th article as to Justices, that there should not be more than five nor less than two in each township to be elected by the people.

After considerable desultory debate, Mr. Browning proposed an amendment, that the number in each township should be from *two* to *four;* where the population is less than 2,000, *two*. Between 2 and 3,000 *three*—over 3,000 *four*. There are in the State, excepting Newark, 148 townships. Of these, 59 have less than 2,000 inhabitants; 46 between 2 and 3,000 and 43 over 3,000—So that 59 townships will have *two* Justices—46 *three* and 43 *four*.

It is intended by the Committee on the appointing power I believe, that these Justices shall be elected by the people at town meetings—to be Justices for the county—all elections to be by ballot, and to be elected for five years. Where not more than *two* are to be elected, no person shall vote for more than *one*. Where more than *two* no one shall vote for more than *two*. So that both parties will be represented unless the majority have more than two-thirds of the population.

Mr. Child liked the mode of appointing but thought some regard should be had to territory as well as population. Some townships are 20 or 30 miles long.

Mr. Parsons objected on the same ground.

Mr. Browning suggested that in such townships, parties, where a Justice is nearer, can go into the next township.

Mr. Allen suggested that as in four or five large townships the population was over 6,000, there should be *five* justices in each township.

Accepted by Mr. Browning.

While the details of the amendment were under consideration, which met with favor,

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

On motion of Mr. R. P. Thompson,

The convention adjourned till to-morrow morning, at nine o'clock.

THURSDAY MORNING, 6th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Starr.

Mr. Sickler offered the following:

Resolved, That it is the privilege, as well as the duty of this convention, to continue its sessions, without respect to the law under which we are assembled, until we have completed our work.

Mr. Sickler said he offered the resolution merely to test the question. He was not in favor of it.

Mr. Ryerson moved the resolution lie on the table. Not agreed to.

Mr. Randolph moved to postpone. Agreed to.

On motion of Mr. Ewing,

The convention resolved itself into committee of the whole, Mr. Stokes in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on the Judiciary Department.

First subject in order, was Mr. Browning's substitute for the amendment offered by Mr. Parsons yesterday to article 8, and which, he said, he had since the adjournment modified to read thus:

"There shall not be less than two, nor more than five, Justices of the Peace in each township.

Where the population of a township shall not exceed 2,000, two Justices shall be allowed; more than 2,000, and not over 3,000, three Justices; more than 3,000, and not over 6,000, four Justices; and in all townships having a population over 6,000, five Justices may be allowed—provided the Legislature may determine the number of Justices to be appointed for the city of Newark.

The first election for Justices of the Peace shall be held at the next annual election for town officers, and commissions to the Justices so elected, shall be issued by the Governor for the Counties in which they shall reside, to be dated on the 1st day of May next, all Justices now in commission to retain their office, until their commissions have expired.

The population of the townships to be ascertained by the last preceding census, until the Legislature provide some other mode of ascertaining it."

Mr. Browning said the great objection urged was that it might provoke the jealousy of the Justices now in commission and they would go against the Constitution. In answer to that they would have the chance of being elected again, and as each one would think he had the best chance, the gain at least would be in favor of the Constitution with this provision.

Mr. Ryerson was surprised that any friend of the Constitution would introduce such a provision. The number of Justices now was legion, and to cut off their heads now would set them all against it, and tend to defeat the Constitution.

Mr. Child said it would create a party magistracy—The evils of which could readily be appreciated.—Besides, it would array against the Constitution every magistrate now in office, as it would bring against it this whole influential body of men, and certainly defeat its adoption by the people. [G]It would be better if it should provide, too, for a gradual, and not an immediate change of the system.

[A]Mr. Vanarsdale said the principle on which the Committee had gone was that no one should be disturbed in office, so that the Constitution should go before the people entirely unembarrassed by any thing which could tend to array any class of citizens against it.

Mr. Zabriskie said the system here proposed could not be carried into effect unless all the Justices were discharged at a particular time. As to the idea that it would array the Justices against the Constitution, he would ask, would any Justice dare to array himself against a provision which gives to the people the selection of their Justices. He wished to avoid all party feeling, and if they retained all the Justices in office for one year there would be all democratic Justices which would be injustice to the Whigs, and if these were all permitted to hold over, would it not array the whole Whig party against the Constitution? But dismiss them all, and are not all put on a perfect system of equality? No one would dare to say he was afraid to trust the people.

Mr. R. S. Kennedy supported the amendment of Mr. Browning, and asked what we had now but a party magistracy. Were not all the Justices appointed by the party in power. He saw no reason why small townships should have more Justices than they had occasion for. [G]Any plan we may adopt for the election of justices of the peace, will in every township, operate against some of the justices.

[A]Mr. Ewing thought the substitute should be divided. He was in favor of limiting the number of Justices, but as to the latter part, he thought the report of the Committee was preferable. If that part of the substitute was adopted, [G]vacating the commissions of the present justices, [A]both parties would unite against the Constitution and strive to have its adoption defeated.

Mr. Lambert thought this embraced two distinct propositions and he agreed with the mover in limiting the number of Justices, but would it not be better to defer the latter part to the Committee on the appointing power and tenure of office. He moved to strike out all after the provision for the number of Justices in the ratio of population and in the mean time the Convention could deliberate on the proposition.

Dr. Ewing moved to divide the question and Mr. Lambert withdrew his motion to strike out.

Mr. Marsh said he had a substitute for the plan offered by Mr. Browning and if his failed, he would offer it, viz: That there should be 4 Justices in each township and ward of a city, to be elected by ballot at the annual town meeting. The Justices to serve for 4 years, and after their election they shall arrange themselves so that the offices of two should be vacated every second year, and at each subsequent election [G]each voter [A]should vote for one Justice only.

Mr. Condit suggested that the whole subject had better be postponed for the present.

Mr. Williamson said we must consider how this would operate in the cities. In Elizabeth borough the Mayor, Deputy Mayor and Recorder were Justices [G]ex officio, [A]and how would this provision operate on them, and, was it intended to vacate their seats. It had better be postponed.

Mr. Stratton suggested to the various members who had offered amendments to withdraw them, and strike out the whole section so that the bill could be reported to the House. The subject would come up again on the report of the Committee on appointments to office and tenure.

Mr. Parsons said he was willing under this view to withdraw his amendment and have the section struck out, leaving it to be disposed of hereafter in the House. [G]Mr. Parsons opposed the graduation of the number of justices by population. He thought the proper basis was territory.

[A]Mr. Pickel said he had a substitute which he believed would obviate all difficulties which was, "The Legislature shall limit the Justices of the peace to not less than two, nor more than six Justices to each township in the State."

Mr. Condit withdrew his motion to postpone.

Mr. Ewing said he would go for Mr. Pickel's substitute as he was satisfied that we were legislating too much, and were not framing a Constitution. He was at first in favour of Mr. Browning's substitute, but thought this far preferable.

Mr. Browning advocated the adoption of his substitute. The limitation of Justices he had no doubt met the approbation of every member nearly in the Convention, and he conceived that the most republican basis of such limitation was the population. That was a sure index of the business of that portion of the State, and was better than a territorial limitation, as a Justice for one township being commissioned for the County could act if required for persons living in adjacent townships. It was better too to have it based on population than to have it uniform, as the small townships would have more justices than they required while the others would have fewer than they actually needed.

As to the second part of his substitute, the question was narrowed down to one of expediency, whether all the Justices should continue in office until their commission had expired, or whether they should expire next spring. It would be delaying the elective magistracy too long—as to the creation of a party magistracy, we have held an exclusive party magistracy, and for our fear, at least, that will continue, and that term will apply equally to the past, present and future state of things, if the magistrates, now in power, are continued. But if it would be a party magistracy, it would be at least a fair division, and there would be an equal portion of the magistracy belonging to each party throughout the State. When the election of magistrates commenced, he submitted that the whole system should commence and

it was now narrowed down to this, whether we should elect the magistrates next spring, or postpone it for two, three or four years. Do not let the system go partially into operation, and clog it with defects so that the cry should be raised on that account against the adoption of the Constitution.

Mr. Allen said he was not prepared to vote on this question, and wished it might be postponed. Whatever action may be taken on the question of appointment now, might come in conflict with other provisions, which may be submitted hereafter in the report from the Committee on appointments to office. He moved to postpone the subject.

Mr. Hornblower objected to the postponement, and it was lost.

The question was then taken on the first part of Mr. Browning's substitute, viz: "that there should be not less than two nor more than five Justices in any township in the State," which was carried.

The second portion, limiting the number according to the basis of population, next came up, and Mr. Browning consented to accept the addition of the words (or ward), but withdrew it on account of the difficulty suggested respecting the cities, and he struck out the proviso for the city of Newark, leaving that to be acted on hereafter. This section was agreed to—ayes 26, noes 18.

Mr. Browning then withdrew the remainder of his substitute, that it might be provided for in a schedule to be attached to the Constitution, or otherwise, as might be deemed proper.

Mr. Hornblower moved as a proviso that *there should be three Justices in each Ward in the city of Newark*, which was accepted by Mr. Browning and which was *agreed to*, and the amendment as agreed to, was substituted for the eighth article, so far as the word *"counties"* in the 3d line, leaving in the original section these words "and this provision shall take effect in each county when the number of said Justices now in office [in each] township shall not exceed ——."

Mr. Vanarsdale moved to fill the blank with *five* but withdrew it, and gave way to Mr. Hornblower.

Mr. Hornblower wished the words "and Wards in the city of Newark" inserted, as it would get rid of his proviso and shorten the Constitution.

Mr. Naar objected to have such an invidious distinction inserted in the Constitution. It might do very well in an act of the Legislature, but hardly for this instrument.

Mr. Hornblower's motion was agreed to, and the proviso previously adopted was left out.

Mr. Ryerson, in order to place both parties on an equal footing,

moved to strike out the words (*"and this provision &c"*) and insert "and this provision shall take effect on the 1st day of May 1848", so as to let the Democratic Justices now in office remain until then.

Mr. Hornblower was opposed to shortening the term for which the Justices were constitutionally appointed and he did so as a matter of principle.—If we wished to get rid of an officer it is right we should have a constitutional provision to do so.—This was an attack only on the office, not on the person but when we were remodelling a constitution and continuing the very office already filled, he thought it was setting a dangerous precedent to take that opportunity to turn the incumbent out of office, and unless we abolish the office, we should not interfere with their vested rights. We have had such an instance in the State of New York, and since that they had never had such an officer as the one turned out of office by that constitution, (Chancellor Kent). He knew no party difference here, and stood up irrespective of party to sustain that respectable portion of the community. The Justices in his county were constitutionally appointed—they had vested rights, and he protested against the action of this Constitution in cutting off their heads. Abolish the office if they choose, but if not, preserve and maintain the rights of those who are constitutionally appointed. As to the assertion of having a party magistracy, he never had in all his practice a decision made against him on party grounds, and he cheerfully bore testimony to the honesty and probity of New Jersey. He had yet to hear a complaint by a Whig or Democrat that he had been unrighteously dealt with by a Justice of opposite party feelings.

Mr. Ewing regretted that Mr. Ryerson had made the motion at all. The vested rights of individuals should be sacredly regarded. Let the Justices terminate their services for the term to which they were constitutionally appointed. These morbid sensibilities respecting party feelings were out of place, and he hoped would be entirely disregarded.

Mr. Ryerson withdrew his proposition and Mr. Field renewed it.

Mr. R. S. Kennedy was in favor of the amendment as a matter of compromise, though he should prefer to see them all cut off next May.

Mr. Field said when the proposition was withdrawn he was about to rise, merely to say he could not concur in the opinion of the Chief Justice. I see nothing unholy, no violation of principle. I consider this Sir, a pure unmixed question of expediency, and are we to be told that on the ground of principle, we have no right to dispose of it. On the adoption of a new constitution, are we to be told that this constitution shall not go into effect until the term of every officer was expired? Gentlemen have asserted that these officers have vested rights and insist that these should not be taken from them. Sir, I am at a loss to know on what ground this rests.

The difficulties as to Justices of the Peace are surrounded by perplexities and embarrassments—There are in New Jersey 2,000, or 3,000 or probably Mr. Chairman 4,000, Justices of the Peace and how have they been appointed? The Honorable Chief Justice says that he does not know any party magistracy in New Jersey, and he wishes us to infer from his remarks that no one had been appointed on party grounds. Mr. Chairman, I would that it were so. It is easy enough for the gentleman to shut his eyes and not to see that we have a party magistracy, but we cannot shut the eyes of others. Every man in the community except the Chief Justice sees and knows and deplores the fact, that we have a magistracy selected on party grounds without reference to qualifications—all sir admit it and all lament and deplore it. The office of Justice of the Peace by the course which has been taken with reference to it, has been brought into contempt; hardly a respectable man in New Jersey can be prevailed on to accept of it, so basely has it been prostituted. If we can remedy this evil without arraying these officers in hostility to the Constitution, I should be glad of it. But difficulties are in the way, and on the other hand I shall bring myself very reluctantly to consent that all the Justices of the Peace shall remain in office till their terms of office shall expire. I say that in the opinion of fair and impartial men the appointing power with reference to this office has been grossly abused and that men were selected by the last Legislature on party grounds. I do not confine my remarks to the last Legislature alone, as the other party has fallen into the same error. I acknowledge with reference to the party to which I am attached, that this power has been abused and that men have been appointed who were not qualified for the office. Mr. Field concluded by saying that the proposition of the gentleman from Sussex, (Mr. Ryerson) was made in a spirit of compromise, and he hoped it would be accepted by the Committee.

Mr. Hornblower explained that when last up he had not noticed the 9th article at all, and he assured the Convention that he spoke in the matter without any personal feeling whatever.

Mr. Zabriskie supported Mr. Ryerson's amendment.

Mr. Ogden concurred in the idea that this was a question of expediency, and advocated the amendment, as the officers now in would only lose from May 1848 to October 1848 of the time for which they were

appointed, and they would have the best opportunity of ingratiating themselves with the people and thus securing their own re-election.

Mr. Child opposed all the propositions and thought it was time enough when the Committee came to consider the 9th section.

Mr. R. P. Thompson after some few remarks in opposition to the present system moved an amendment that nothing in the Constitution should operate to vacate any existing condition.

Mr. Parsons offered an amendment.

Mr. Parker offered another, and the Convention became at last completely confused by these additions, alterations and substitutes, and considerable discussion ensued upon each, all, however, agreeing in two things, viz., the present system must be done away with, and that the members evidently did not understand each other. At length Mr. Ryerson cleared up the difficulty, by suggesting that the words "There shall be elected" be added to the beginning of the 1st line, whereupon Mr. Parsons withdrew his amendment, Mr. Parker his amendment, Mr. R. P. Thompson his amendment, Mr. Field his amendment, Mr. Pickel his amendment, Mr. Marsh his amendment, and Mr. Browning accepted the addition offered by Mr. Ryerson; and the question was then narrowed down to the insertion of these words.

Mr. Halsted. Mr. Chairman, as I shall probably be singular in my vote upon this question, I deem it proper to call the attention of the Convention for a few moments to the reasons which induce me to give this vote. I cannot, sir, vote for the proposition in any shape that all justices of the peace should hold their commissions till their terms of office expire. I believe, Sir, we mistake the sentiments of the people we are sent here to represent. I think, Sir, the Convention is of one opinion, and I think the people of New Jersey are of one opinion that we have too many justices of the peace. The people, Sir, think that the appointing power by both political parties has been abused—I will not say abused—carried too far. And perhaps it is not going too far to say that this is one of the difficulties which presses so strongly on the minds of the people, that the remedying of it would commend the Constitution to their favor.—But Sir I cannot understand this argument, that while we all agree that the present position of things in reference to justices of the peace in New Jersey is one calling loudly for remedy, I cannot see the force of the argument, which assumes that we, the representatives of the people are to say in this Constitution we will provide a remedy, but you shall not have the benefit of it for four or five years. I cannot understand that—why we admit that it is an evil requiring a remedy and while we say we will provide a

remedy, yet you shall not enjoy that remedy for four or five years. And why is this? The only reasons you give are that it will array the justices of the Peace against the Constitution. Sir, this is a motive on which I cannot act. I do not believe in the effect of this motive. If there is any thing in the argument, it will and ought to be counterbalanced by the argument that the people will rise in judgment on the acts of this Convention. Adopt this provision, which all admit is immediately necessary, but refuse the immediate benefit which ought to flow from it on the ground that this body of men will oppose the Constitution, while you will have the people saying, "What alarmed you? why did you not give us the immediate benefit we required and demanded?" Sir, I am not prepared to act upon such an alarm. The weight of the argument is the other way, at least in my mind it is so.

I think, Sir, enough has already been said here on the subject of vested rights. I have no belief in such a doctrine. On the contrary, if we adopt a Constitution which provides for the election of these officers under it, the officers would be elected, and those holding commissions would expire. It is clear then that this provision that officers may hold over becomes necessary to prevent an interregnum, and this is the extent to which other Constitutions have gone, and on this basis only is sustainable by the necessity of the case.

In reference to the justices of the peace, the ground taken by several gentlemen on this floor is not sustainable. The Chief Justice has said it would present a different case if we were about to establish officers, but to leave the officers and cut off the heads of the incumbents he considers as opposed to their vested rights. It is, Sir, in fact, an abolishment of the office. The people say, we will have only so many justices courts.—Have they not a right to say this? and if they do, are we to be told that the people shall not have the benefit of the reduction of the number of the courts, because there are a great many now existing, and it would be interfering with vested rights to abolish them?

I have given my reasons, Mr. Chairman, for the vote I shall give, and I have no more to say.

Mr. Connolly said he should oppose this, as instead of diminishing the number of justices of the peace, it would be increasing them if those in commission were to hold on till their terms expired, and the people were to elect others besides.

Mr. Marsh took the same grounds of objection.

Mr. Green reminded the gentlemen that this could only be a temporary evil. If the people saw fit to choose more justices let them do so. The evil would work itself out in three or four years.

Mr. Ryerson's amendment was then agreed to, [G]that the election of justices under this constitution should begin at the next spring election.

[A]Mr. Browning moved to add to the section as now amended a provision that the population of the townships should be ascertained by the last preceding census until the Legislature should provide some other mode of ascertaining it, which was agreed to.

The 9th Section was then agreed to without discussion and [J]the committee rose, reported progress, and had leave to sit again.

On motion of Mr. Parsons,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

On motion of Mr. Parker, it was

Resolved, That the secretary of state be requested to inform this convention the number of judges of the inferior court of common pleas and justices of the peace now in commission in the several counties of this state, distinguishing the number in each county, and the month and year in which they were respectively appointed.

On motion of Mr. Clark,

The convention resolved itself into committee of the whole, Mr. Stokes in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on the Judiciary Department.

[G]The amendment [A]to Article 5th of the [J]Judiciary Report, [G]offered by Mr. Clark, some days ago, and postponed, was taken up.

[A]He said that every one who had listened to the argument of the Chairman of the Committee on the Judiciary Department (Mr. Vanarsdale) must be satisfied that the Judicial tribunals of N. J. are not able to discharge all the business that comes before them—and if he has not the consolation of knowing that his plan has been adopted, it has at least been the means of turning the attention of members to the subject, in such a way, that the object may be effected. I do not know that my plan is the best one. I only present it, as a nucleus—so that we may get the subject fully before us. In this as in all other matters I am not tenacious of my own opinion and have formed none definitely without deliberation and discussion.

It is manifest that we need something more to accommodate the Judiciary business of the State—My object is not to destroy the present system or throw it out of gear, but to extend its operation—to make such healthy and salutary alterations as may make it more efficient and enlarge its benefits.

By the report of the Committee, our Circuit courts are not recognized as one of our Judicial tribunals. This I regretted, for they are our highest common law Courts for the trial of mixed questions of law and of fact. We have 2 Circuit Courts in N. J. One a *nisi prius* court, which tries in the county where the *venue* is, all issues made up here at Trenton, and the other a Court of original jurisdiction. It has struck me that they may be blended or assimilated together. My object is to leave the Supreme Court to have original jurisdiction as before, but to give also the same jurisdiction to the Circuits—This will be the means of bringing the common business into the Circuits. I also desire to give a judgment obtained at the Circuits, the same force and effect, when docketed in the Supreme Court, as a judgment obtained there.

My friend from Passaic, Mr. Ogden intends also to offer an amendment by which all *certioraris* and remedial writs to inferior Jurisdictions will be tried at the Circuits. By these means all cases except points reserved and cases stated will be tried at the Circuits, and thus the Supreme Court be relieved from its immense pressure of business.

Again, we propose that a writ of Errors, may lie from the Circuit to the Supreme Court, or directly to the Court of Errors and Appeals. (He read the section and explained it.)

I think this will satisfy the people. They have asked, why they could not have as good a Court in each county as there is in this State—and I think it will be better than the plan reported originally—for instead of having the Supreme Court in Districts, it will be brought into each county.

[A]He summed up the advantages of the proposed system:

It will give to judgments at the Circuits the same force when docketed, as those in the Supreme Court.

There may be a writ of Error to the Supreme Court as now, or immediately to the Court of Errors.

The Circuit Court will have concurrent Jurisdiction with the Supreme Court.

The two Circuit courts will be reduced to one, and character and uniformity will be given to the whole system.

Mr. Ryerson. Is the original jurisdiction of the Supreme court at all interfered with?

Mr. Clark. Not at all.

Mr. Hornblower inquired if making the Supreme Court or Court of Errors *concurrent* with the Court of Errors and Appeals, would not make the decision of the Supreme Court final?

Mr. Clark. It is not intended so, sir.

The 1st section as to the Supreme Court being waived for the present.

Mr. Ogden offered his amendment. (Both will be found below as amended and agreed to.)

Mr. O. alluded to the establishment of the present Court (by Statute) which had been found to work well. It is the most useful Court in New Jersey. Business is done with more despatch and more satisfaction to both counsel and clients. The object now is to make it a constitutional Court, and to make it, as the title of the act is, a court "to facilitate the administration of Justice."

He explained with great clearness the intended operation of the system as was done by Mr. Clark.

Mr. Vroom could not say he was prepared to vote for the amendment. There are some difficulties on my mind, and I will state them as explanatory of the vote, which as at present advised, I shall feel compelled to give. I am willing to see an improvement upon our present Judiciary system because I believe it is susceptible of improvement, but without being entirely overturned.

In the first place I do not approve of making the Circuit, a constitutional Court. It is and must be in its nature an inferior Court. It was created by statute and has worked well—but in a few years, I am not prepared to say but we will find out a plan that would be better, with a little Legislative aid, and we had better not tie our hands by a constitutional provision.

But I am opposed on principle to establishing as constitutional courts, any but the higher ones. That is the ground upon which the Judiciary Committee have wisely gone (Mr. V. read that part of the report.) These are our great Courts, and should be established by the constitution.

Another difficulty is, that this amendment proposes to give the Circuits equal jurisdiction with the Supreme Court of N. Jersey. Why Sir, it is difficult to define the powers of that Court. It is the great Court of our State. It is a controlling, supervisory Court. It does not derive its existence from Statutory provisions. It is modelled after the Court of King's Bench, the great court of Westminster Hall. It is the mighty arm that controls inferior courts. It is the great sun that gives light to all others, and the great power which keeps them all in

their orbits. If any errors are committed in the lower Courts, here they are set right. If an officer encroaches upon an office, where is the remedy but in the Supreme Court by a *quo warranto*? It is, it should be a Supreme Court, one of transcendent powers—and I cannot bring my mind to give the Circuit Courts concurrent Jurisdiction.

I am aware that there are many matters of *certiorari* which may as well be tried by the Circuits as by the Supreme Court. But where will you draw the line? The act of 1838 drew it, and I am not sure but correctly giving to the Circuit jurisdiction over *certioraris*, to Justices, and to Common Pleas on appeals. But if you give them jurisdiction over all these *certioraris*, civil and military, I confess I am afraid. Some of them take a week or more in the argument. What will become of the Jurors and witnesses of the issues formed, during these arguments?

I do not know but beneficial results may accrue from giving the same force to Circuit Judgments, when docketed as to those in the Supreme Court. But even then, there will be some difficulties in practice—to which Mr. V. alluded.

Mr. Clark replied. He held that the Court which has jurisdiction over all the property in the State, and where matters of fact are tried by a Jury, should be constitutional.

Again it is objected that we give the Circuit Courts equal jurisdiction with the Supreme Court. Not so. Only concurrent jurisdiction in civil cases *in the County*.

As to a *quo warranto*. If the Judge feels incompetent, will he not reserve the point for his brethren *in banc*. Will he not always act with reference to a paramount authority?

As to detaining Jurors and witnesses, the rule will doubtless be maintained, as it is now, that all questions of fact shall be first determined.

Mr. Browning. The evil complained of is the concentration of all the important legal business of the State at Trenton, to the great injury of suitors and delay of justice. The business of East and West Jersey conflicts, and Counsel are brought here, and are not able to do their business with facility and satisfaction to their clients. This will be remedied by allowing it to be done in the Counties. It will be conceded by all that nine-tenths of all the business from the Inferior Courts that accumulates in the Supreme Court can as well be decided by a single Judge at the Circuit, and whenever his decision works any danger to liberty and property, it may be taken to the Supreme Court.

As to making it a Constitutional Court it is so by the 1st Section

and the Legislature may alter or amend it.

I therefore hope the amendment will meet with favor, and submit that the fears which have been mentioned are groundless with reference to any evils to liberty or to property.

Mr. Williamson (Prest.) Before the Convention adjourn I hope we shall improve our judiciary system, which is universally complained of; and unless we do so, we shall not half perform our duty. How shall it be done? The fault is not with the Judges, but that all the great business of the Court is delayed by the concentration of common business. We can only correct the evil by one of two ways—Either to divide the Court as reported by the Committee, or to get clear of the common business—I was in favor of dividing the Court and have been so for half a century. Before the Revolution, the Court was held alternately at Burlington and Amboy. But if that plan cannot be adopted, I am in favor of this. If this is not adopted and no one else shall do it, I shall attempt to devise a plan for dividing the Court, without the three Clerks and much of the other machinery, which I think could be done so as to be satisfactory to all. But I am satisfied that by the plan before us, the evils will be lessened if not remedied entirely. I think the fears that have been expressed are groundless. If it is thought that the prerogative writs of *quo warranto, prohibitions* and *informations* should be excepted, that can be done. I am not able to argue the question further. My feelings warn me that I should not have gone so far. I am not tenacious of this or any other plan but those who oppose it should give us a better.

Mr. Hornblower had been willing to aid his friends from Hunterdon and Passaic, but he could not vote for their amendments.

He was willing to see the Circuit Courts made constitutional. They have been in operation for several years and have worked well.

But I am not willing to establish 19 Supreme Courts in New Jersey: with a supervisory and controlling power over all others.

Neither am I willing that the Circuit Courts shall have jurisdiction over the high prerogative writs that have been mentioned. The *quo warranto* may be issued to the Judges, Treasurer and Attorney General. If the latter is acting *de facto* in Cumberland Co. and the writ issues to him, shall a single Judge there oust him from his office?

I am willing to specify certain matters which may be carried down to the Courts but not to do it in this sweeping manner.

I do not think dividing of the Supreme Court would be wise, politically or economically. The value of the Court to a certain extent depends on the acquaintance and association of the bar and of the

Judges: and to divide it would make the division of East and West Jersey more strongly marked and felt.

We have had for six or seven years authority to hold special terms. Some time since we appointed a special term at Camden. We went down there and but five cases were put on the list and only one was argued, and a week was lost. So at Newark. There were but two or three cases set down and none were argued, as one of the Judges was taken sick. But a year or two ago we appointed a special term at Trenton a week before the regular term, and we despatched 10 or 12 causes.

Mr. Vroom. No sir, not half of it.

Mr. Hornblower. I may be mistaken, but I thought we did. The delays that have been mentioned are in part at least the fault of counsel. At the opening of the Court, we call over the names of counsel—and they are scarcely ever all ready to make their common motions.

Mr. Vanarsdale. The Convention is aware that the plan which was reported by the Com. to remedy the evils complained of, was that the Court should be held in different parts of the State. That is no doubt the true remedy. It is the plan adopted in other States. We are brought together here from different parts of the State, with different business, and it is impossible that all should be accommodated. It has been a desideratum in East Jersey for a long time to devise some expedient to remedy these evils. First, the Circuit Courts were established, and then an act was passed by the Legislature for the holding of special terms. And I call attention to the mode in which that act has been carried into execution.

There has been one special term in West Jersey, and one in East Jersey. Is that a fair execution of the act? Does the holding of one term in each section show that the court is in earnest in carrying it into effect? The Legislature in passing the act were liberal. They paid the Judges for holding them. And now they hold a special term in Trenton, and the only effect is to get their fee, and relieve them of some of the business of the regular term.

The business of the different parts of the State is entirely distinct. We are as much disconnected as the eastern and western shores of Maryland—or the east and west sides of the Blue Ridge. But the object is not gained by relying on special terms. That is of no use. I think it is best to divide the Court—By this plan the same Court will be preserved—and the Chief Justice might preside in each, and with a little self-denial bring himself into notice in all parts of the State. But as that plan does not seem to meet the views of the Convention,

let us take the next best one. We have been patient and got the plan of Circuit Courts and that is the only one which has yet accommodated us of our clients.

Mr. Hornblower. I wish to make a remark in exculpation, as to the holding of special terms. We have been told that we hold special terms at Trenton a week before the regular term and get our fees. I am sure it was not intended as an insinuation, that we hold them here for that purpose. At our regular terms we always have announced that we would hold special terms, whenever the counsel would agree upon the time and place, if it did not interfere with our other duties.

Mr. Williamson. I have never heard any such announcement, but to my own knowledge, the Court has been asked to hold special terms, but refused to do it elsewhere than at Trenton!

Mr. Hornblower. I beg pardon, but I never said so, nor any of my associates in my presence. Counsel have often, when asked to do it, out of and in Court, attempted to fix upon a time and place, but could not agree on account of Circuits, and for other reasons—and certainly no one would impute personal or interested motives to us.

Mr. Vanarsdale. I made no imputations, but only stated facts. The Court are entitled to their fees. I do not know whether they get them or not: But the special terms are held here, and the only effect is, to relieve themselves from the business of the regular terms.

Mr. Hornblower. It is a most unkind insinuation against those members of the Court who are not here to defend themselves.

Mr. Randolph advocated the amendments, and after further discussion by Messrs. Vroom, Ogden, and others, they were adopted as follows:

I. The circuit courts shall be held in every county of this State by one or more of the justices of the supreme court and shall in all cases within the county, except in those of a criminal nature, have common law jurisdiction concurrent with the supreme court; and any final judgment of a circuit court may be docketed in the supreme court, and shall operate as a judgment obtained in the supreme court, from the time of such docketing.

II. Final judgments in any circuit court may be removed by writ of error into the supreme court, or directly into the court of errors and appeals in the last resort.

The committee rose, reported the same to the convention, with sundry amendments, and were discharged from the further consideration thereof.

On motion of Mr. Allen,

Ordered, That the same do lie on the table and be printed.

On motion of Mr. R. P. Thompson,

The convention adjourned till to-morrow morning, at nine o'clock.

FRIDAY MORNING, 7th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Reed.

Mr. Dickerson, on behalf of the majority of the Committee on Appointing Power, tenure, &c. presented a report thereon, stating at the same time that the minority had not presented any report, but would reserve their right to present their views when the subject came up for discussion.

APPOINTING POWER AND TENURE OF OFFICE.

The committee to whom was referred so much of the constitution "as relates to the power of appointment to office, and the tenure thereof," beg leave to report—

I. *Militia Officers.*

1. The legislature shall provide by law for enrolling, organizing, and arming the militia.

2. Captains, subalterns, and non-commissioned officers shall be elected by the members of their respective companies.

3. Field officers of regiments and of independent battalions shall be elected by the commissioned officers of their respective regiments or battalions.

4. Brigadier generals shall be elected by the field officers of their respective brigades.

5. Major generals shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate.

6. The legislature shall provide, by law, the time and manner of electing militia officers, and of certifying their elections to the governor, who shall grant their commissions and determine their rank, when not determined by law; and no commissioned officer shall be removed from office but by the sentence of a court martial, pursuant to law.

7. In case the electors of subalterns, captains, or field officers,

shall refuse or neglect to make such elections, the governor shall have power to appoint such officers, and to fill all vacancies occasioned by such refusal or neglect.

8. Brigade inspectors shall be chosen by the field officers of their respective brigades.

9. The governor shall appoint the adjutant general, commissary general, and all other militia officers not otherwise provided for in this constitution.

10. Major generals, brigadier generals, and commanding officers of regiments and independent battalions, shall appoint the staff officers of their divisions, brigades, regiments, and independent battalions, respectively.

11. All militia officers now in commission shall continue in office as if this constitution had not been made.

II. *Civil Officers.*

1. Justices of the supreme court, chancellor, and judges of the court of errors and appeals, shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate.

The justices of the supreme court and chancellor shall hold their offices for the term of seven years; shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office: and they shall hold no other office under the state or United States government.

2. Judges of the courts of common pleas shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate.

They shall hold their offices for five years; except when appointed to fill vacancies, they shall hold for the unexpired term only.

3. The treasurer and keeper and inspectors of the state prison shall be appointed by the Senate and General Assembly, in joint-meeting, and commissioned by the governor.

They shall hold their offices for one year, and until their successors shall be duly qualified into office.

4. Attorney generals, prosecutors of the pleas, clerks of the supreme court and court of chancery, and secretary of state, shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate.

They shall hold their offices for five years.

5. Mayors, recorders, aldermen, and other officers of cities and boroughs, shall be elected or appointed, and shall hold their respective offices in the manner, and for the time or times, provided in their respective charters.

6. Law reporters shall be appointed by the justices of the supreme court, or a majority of them; and chancery reporters shall be appointed by the chancellor.

They shall hold their offices for five years.

7. Clerks and surrogates of counties shall be elected by the people of their respective counties, at the annual elections for members of the General Assembly of this state.

They shall be commissioned by the governor, and hold their offices for five years.

8. Sheriffs and coroners shall be elected annually, by the people of their respective counties, at the annual elections for members of the General Assembly of this state.

They may be re-elected until they shall have served three years, but no longer, after which, three years must elapse before they can be again elected.

They shall be commissioned by the governor.

9. Constables and freeholders shall be elected every year, at the annual town-meetings of the townships in the several counties of the state.

10. Justices of the peace shall be elected, by ballot, at the annual meetings of the townships in the several counties of the state, and of the several wards in the city of Newark.

They shall be commissioned by the governor, for the county, and their commissions shall bear date and take effect on the first day of May next after their election.

They shall hold their offices for five years: except when elected to fill vacancies, they shall hold for the unexpired term only; provided, that the commission of any justice of the peace shall become vacant on his ceasing to reside in the township in which he was elected.

The first election for justices of the peace shall take place at the next annual town meetings of the townships in the several counties of the state and of the several wards in city of Newark.

In all elections of justices of the peace, if no more than two are to be elected in the township or ward, no elector shall vote for more than one person; if no more than four are to be elected, no elector shall vote for more than two; and if five are to be elected, no elector shall vote for more than three.

11. All other officers, not otherwise provided by law, shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate; and they shall hold their offices for the time

prescribed by law.

12. United States senators shall be chosen by the Senate and General Assembly, in joint-meeting.

They shall be commissioned by the governor.

MAHLON DICKERSON, *Chairman.*

Which was read, and

Mr. Ewing moved,

That the report be recommitted, with instructions, for the purpose of changing the appointment of the chancellor, the judges of the supreme court, and court of errors, the judges of the common pleas, the attorney general, &c., from the governor and Senate, to the joint-meeting, as under the old constitution.

[G]Mr. Ewing said the report was so different from what he expected that he should move to re-commit, instead of to print.—[A]He desired to have the proceedings of this Convention such as would meet the approbation of the people of New Jersey and this he was sure would not. [G]He wished to act with perfect courtesy; but this report recommended a most dangerous innovation. It was inconsistent with itself. Its provisions for the election of justices, clerks and surrogates by the people were liberal, [A]and so far he approved of it. He anticipated difficulties with regard to this report, and he wished to meet them at the outset. He objected to this being printed and going out as the deliberate report of a committee of this body, unless a very large number was printed for very general distribution, so that the people might know what action this Convention would take with regard to appointments to office. A small spark might kindle a great flame and he wished to put his foot on it at once, and extinguish it, before it had produced wide evil.

None of the constitutions of other states [A]had advanced so near the old democratic republican principles as the old Constitution of this State [G]in regard to appointments. [A]It was a perfect model of a Constitution for the government of a free people, and it was one which he desired to preserve to the latest posterity.

The appointment by a Governor and Council was a retrograde movement, worthy to have emanated from His Majesty the King when he had the dominion of the province. It was a remnant of barbarous times, inconsistent with the liberal feelings and enlightened intelligence of the age in which we live. Appointments should be made in Joint Meeting by the immediate representatives of the people. The officers are not for the benefit of particular incumbents. They are appointed to administer the laws under a written constitution which

every man can understand for himself. [G]It is no argument that the joint meeting has abused their right of appointment. It is the duty of this convention to limit the number of officers and thus restrict this abuse. [A]This plan comes from the most despotic governments in Europe, and he should to the last resist all approaches to such aristocratical proceedings. [G]He wished to see in this state no orders of patrons and clients.

We have exalted the Governor and Senate and given them great privileges: and if you will abuse this concession by adding this great patronage, I shall resist it.

I am willing the Governor should be elected by the people, but I am fearful of the consequences. Our governors, [A]appointed by their representatives, [G]have been the envy of other states. Livingston, Paterson and others of later times, have been men of the highest character.

We have increased the tenure of his office to three years. And now you will put in his hands the nomination of all the officers throughout the state. It is an aristocratic feature—not called for by the people. The constitution, containing such a feature, will not be right.

I feel called upon, though in circumstances of weakness and inability, to oppose it. I would concede to the governor the appointment of some officers within his immediate sphere, but to give him all appointments, I never will consent to.

I know the preponderating influence of some parts of the state; but I contend that every county, however small, shall have its fair proportion of influence, and that no family, or other interest shall have an advantage.

Mr. Child was opposed to discussing this question at this time. He hoped the report would be suffered to take its usual course.

Mr. Dickerson hoped, if it were re-committed, it would not be re-committed to the same committee. They would, probably be unable to agree.

The motion to re-commit was disagreed to, [A]ayes 11, noes 23.

[J]On motion of Mr. Zabriskie,

The report was ordered to lie on the table and be printed.

Mr. Parsons offered the following resolution:

Resolved, That the committee upon such parts of the constitution as were not referred to the several special committees, be requested to take into consideration the expediency of providing in the constitution for a state enumeration of the inhabitants of this state every ten years, commencing in the year 1845;

Which was read, and referred to the committee on that subject.

Mr. Wurts called up the resolution, offered yesterday, [G]by Mr. Sickler, [J]with regard to the power and duty of the convention to continue its sessions, [A]but Mr. Green suggested that it would only set the Convention by the ears, and would lead to a long discussion, as some members would go for it on principle. Mr. W. said he wanted it disposed of.

Mr. Hornblower suggested that it was now very well disposed of, as it lay on the table, and it had better lie there.

[G]Mr. R. P. Thompson called the previous question, after which a disorderly and noisy debate followed, as to the merits of the question, points of order, &c.

[A]The resolution was however taken up, ayes 27, noes not counted.

[J]Mr. Wurts moved that the same be dismissed from the files of the convention:

Pending the consideration whereof,

Mr. Sickler asked, and obtained leave to withdraw the resolution.

On motion of Mr. Ryerson,

The convention resolved itself into committee of the whole, Mr. Cassedy in the chair, upon the consideration of the report of the Committee on the Legislative Department [see Index for text].

[A]Section 1. Mr. Hornblower moved to strike out *general* and insert *a House of* [before Assembly] and Mr. Kennedy moved to strike out *Senate* and insert Council—not agreed to. [The Advertiser did not say which Kennedy, while the Gazette ascribed the motion to Stokes.] Mr. Hornblower withdrew his motion.

Section 2. Mr. Cattell moved to strike out *three* (years) and insert *four*, as the term of office for the Senators.

Mr. Cattell said his object in submitting the amendment, now before the Committee, was to bring up at this early stage in the consideration of the Report on the Legislative Department, the question of biennial sessions of the Legislature. Mr. Cattell said he was aware that in bringing this question again before the Committee he was subjecting himself to the charge of proposing a measure, which had been once fully discussed and defeated. But, he had been informed (for it was his misfortune to be absent at the time) that when this proposition was negatived before, the committee was very thin, there being but a bare majority present, and the vote against the proposition was decided by a very small majority.

I am in favor (said Mr. Cattell) of biennial sessions of the Legislature, first—because it is an economical measure. Among the very few instructions given me by the people of the county which I have

the honour in part to represent, the most prominent was to make the new Constitution a cheap one, and not to increase the burthen of the people for the benefit of the office holders and office seekers. Now we have already in other parts of this Constitution which we have adopted, increased our state expenses. We propose additional officers. We have already determined, (in obedience to the fully expressed wishes of our constituents, I admit) to have both a Governor and Chancellor which creates an additional officer; and as this additional officer must be of high character and great legal attainments, he must command a high salary. We have provided also for the appointment of six Judges of the Court of Errors and Appeals; these are additional officers and will necessarily increase the expenses of the State. And, I am not sure that the principle we adopted yesterday in respect to the Circuit Courts will not render necessary the appointment of another Justice of the Supreme Court.—To all this I do not object. If the learned and venerable legal gentlemen of this Convention who have had great experience in the Courts agree on these points, and recommend these additional officers as necessary and proper, I will be the last man to object. But, while we are increasing our expenses in one branch, will it not be well to economize in other branches? If we increase the expenses of our Judiciary, would it not be wisdom to retrench in other points, if practicable?

The honorable gentleman from Middlesex (Mr. Randolph) estimated, the other day, that the adoption of this principle would be an annual saving of $20,000. The gentleman may have calculated a little too high, but it is far from being an extravagant estimate. And is not the saving of the sum of $20,000 annually in the expenses of so small a State as New Jersey an item worthy of consideration?—would not such a measure commend itself to the good sense of the entire people of the State? would not the taxpayers of New Jersey rejoice to be relieved from one half of the State tax? I submit Mr. Chairman that there can be but one opinion upon this point. It will meet the approbation of our constituents. The people of New Jersey are an economical people. They are so in their private affairs, and we have so far practiced upon this principle in our public affairs as to avoid up to this time, what few of our sister States have avoided, the burden of a State debt.

But gentlemen say that annual sessions of the Legislature are necessary and that without them the public interests will suffer. Now why is it necessary the legislature should meet annually? To add to the already over-burdened Statute Book of New Jersey! To pass laws

granting or interfering with "*vested rights*"! To annul marriage contracts! To spend weeks in the discussion of resolutions to instruct our Senators and Representatives in Congress how they shall discharge their duties! And if the appointing power shall be continued as heretofore in the joint meeting, according to the wish of the honorable gentleman from Cumberland, annual sessions may be needed, to create Judges and justices to supply the alarming deficiency now existing in the State. If these things are desirable, I admit that you will require frequent sessions. But, sir, I apprehend that the people of New Jersey have no such desire. They are already groaning beneath excessive legislation and they look to this Committee for relief from this burden.

The author of Eumenes, whom the learned gentleman from Essex, (Mr. Hornblower) so highly eulogized and who has been quoted by the honorable gentleman from Cumberland, said more than 40 years ago, that New Jersey had laws enough to last for half a century. If, sir, this was forty years ago, if it bore the semblance of truth then, how much more must it be applicable to our situation now, since, we have during all this time continued to add statute to statute and volume to volume.

But, we are told there will be occasions, when the State may suffer for the want of Legislative action. It may be possible that such an occasion may arise. But it must be indeed a rare occurrence.—The learned gentleman from Somerset (Mr. Vroom) in the discussion of another subject asked this significant question: "Has any law been passed in New Jersey in the last twenty years, of such importance that if it had not been passed the State would have been worse?" I take the question as pertinent to the subject now under discussion, and I ask gentlemen who contend for the necessity of annual legislation, to point out the law, which has been passed in New Jersey during the last twenty years, that could not have been omitted for one year, or provided for one year in advance without injury to the State. If it be true that no such law can be found, then most assuredly there is no necessity for annual sessions. But if there could be found one or two, or three cases of the kind, it would prove nothing against the measure, for they would only be exceptions to the general rule, and to meet such cases the power may be vested in the Governor to convene the Legislature in cases of absolute necessity.

Suppose sir, that for twenty years no necessity should arise for convening an extra session of the Legislature, the saving in that time would amount, with simple interest, to $652,000. Add that to your school fund if you please, and the public school house may be opened

every day in the year to every child in the State. You may build a school house on every hill top, and in every valley from Sussex to Cape May, and send the schoolmaster into the remotest corners of your State, an object which every member of this Convention must desire. If these views are correct then Mr. Chairman, we shall accomplish two desirable objects—*a saving to the State, and some relief from excessive Legislation.*

But, if this were all—if the advantages of this measure ended here, desirable as I deem these to be, I should not now be found trespassing upon the time of the Committee. But sir, there is a higher object than either of these. There is above and beyond all this, an object which this measure will tend to accomplish of the importance of which it seems to me no proper estimate can be made. It is that the measure will tend to calm the tempest of political excitement, which is blasting every thing that is lovely, and which rages without interruption from year to year, and from generation to generation.—The gentleman from Somerset (Mr. Vroom) says there is a kind of political rest which he never desires to see. The sentiment is a good one: but while the honorable gentleman, would avoid the stagnation attendant upon a calm, he certainly would not desire a constant tornado. It is sometimes said that political agitation tends to purify the political atmosphere just as the storm does the natural atmosphere. I admit the truth, and the beauty of the simile. But would gentlemen have eternal storm? —Would you have the thunder which heralds the approaching cloud, mingle its tones with the echo, of that which is just passing away? Would you have the skies forever hung in blackness? Would you afford no time for the rainbow to throw its beautiful colors across the sky? Certainly not. Neither would I have constant political agitation. What I wish to be relieved of is this *perpetual* political storm. Why sir the most careless observer, must discover, that party spirit is overstepping its legitimate bounds, and that unless checked, must be productive of evil, and only evil. It interferes with our social relations, it weans a man from his duty to his family, his duty to his friends, yes sir, and sometimes, I fear from his duty to his God, to engage in the strife and discord and tumult of party conflict. The frequency of elections has much to do with this; before the excitement of one dies away another is at hand, and having but just quit the field you are called upon to renew the combat—Thus the tendency is to convert every man into a political gladiator. The son is arrayed against the father—brother against brother—friend against friend, and in this unhallowed strife for power, and patronage, all the kindly social feelings are

obliterated—families are alienated, and the ties of friendship are broken asunder.

Mr. Chairman we want a respite from such scenes as these. Gentlemen from counties in which there is a decided majority on one side or the other may not feel this evil, but in such counties as that which I in part represent, where parties are nearly balanced—in such counties as Salem and Cumberland, and Middlesex and Morris, we feel this to be an enormous evil. And we desire something to allay this excitement—to soften the asperity of party feeling, and to lead us to elevate *patriots* instead of *partisans*, and to aim at the good of our country rather than the promotion of the political dynasty to which we are attached.

Will not the adoption of this measure tend to produce this result? If the frequency of elections has much to do in perpetuating this excitement, it is a well known law, *"remove the cause and the effect will cease."*

But we are told that this is an experiment, an innovation, and that we are not sent here to try experiments, but to make a Constitution that the people will approve. That this measure is an experiment in New Jersey I am willing to admit, and in this view of the case, I apprehend our new Constitution, will be a series of experiments, for I very much fear, we shall leave scarcely a feature, of our old time honored Constitution unchanged.

But if gentlemen mean that this is an experiment or innovation, as regards the whole country I dissent altogether from the declaration. The principle is not a novel one in other States. Some gentlemen in this body who have not examined this subject, may be surprised to learn, that eight States of this Union have adopted this principle, and provide for biennial sessions of their respective legislatures and three or four besides have only biennial elections.

The gentleman from Passaic, (Mr. Parsons) says these are small States, the population of all save one he says is smaller than that of New Jersey.—Not so Mr. Chairman—the honorable gentleman is mistaken.

Mr. Parsons—I admit, sir, I omitted one, North Carolina.

Mr. Cattell—The Honorable gentleman omitted *five*. Six of these eight States contain more inhabitants than New Jersey and three of them contain each more than twice as many. Let us look at this matter. North Carolina has a population of 753,419; Tennessee 829,210; Mississippi 375,651; Illinois 476,183; Missouri 383,702; and Georgia 691,392; while New Jersey has only 373,306. If we turn from population to the territory of these States the comparison will be still more against us. North Carolina has 68 counties and 50,000 square miles; Tennessee 72 counties and 45,000 square miles; Mississippi 56 counties and 46,000 square miles; Arkansas 39 counties and 54,000 square miles; Illinois has 87 counties and 53,500 square miles; Missouri has 62 counties and 66,000 square miles; and Georgia has 93 counties and 62,000 square miles. And all these have adopted the system of biennial legislation. Well, sir, now New Jersey. *She has 19 counties and 7,276 square miles of territory!!* We have been told, sir, on the floor of this house more than once, that N. Jersey had extensive interests, agricultural, mechanical and commercial, to be protected and nurtured by legislation; and really under the eloquent remarks of gentlemen upon this subject, I began to imagine that I was a citizen of a great State. But when we come down to the facts, we find that New Jersey is a small State, limited in territory and comparatively sterile in soil and we have not those great and diversified interests which gentlemen imagine, require so much aid from legislation.

Mr. R. P. Thompson said he must interfere;—when the gentleman says the soil of New Jersey is sterile he must not speak for Salem County.

Mr. Cattell. I admit we have our green spots, and my native county, to which the gentleman alludes is one of them; but I submit that upon the whole the remark is just. We have the rocks of Sussex and of Bergen, on the north, and the sands of Cape May on the south, and these are not fertile. I was taught in my boyhood that we had neither extent of territory nor fertility of soil to boast of—but that we had that of which we have a right to boast. We have *Trenton*, and *Princeton* and *Monmouth*, and they are ours for all time. We have had our distinguished sons, and we have them still; and above all we have always had and we still have, an independent and honest yeomanry.

If then, Mr. Chairman, biennial legislation, is sufficient for States with such extensive territory and population, as those I have just named, why will it not suffice for the small State of New Jersey? I submit, Mr. Chairman that it will, and that the adoption of this measure will lessen materially the expenses of the State. Save us from excessive legislation, and it will tend to calm the tempestuous ocean of political excitement upon which we are perpetually tossed.

In conclusion, permit me to say that I am not a prophet nor the son of a prophet, but I will venture to predict here, that if you adopt this measure, when the constitution we make shall be submitted to the people, it will be found to be the most popular feature of that instru-

ment. And permit me further to say, Mr. Chairman, that if the Almighty Ruler of nations and of individuals, shall in his goodness continue to us the blessings of our free institutions for 20 years, and if any portion of us shall be permitted to meet together at the expiration of that period, it will be a theme of mutual congratulation that we were instrumental in adopting a principle which we shall then know has been productive of so much good.

The motion to strike out three, and insert four, was lost—ayes 20, noes 30.

Mr. Condit. Mr. Chairman, I am not satisfied with the mode in which the Senate is constituted by this report. This is the old mode, and was probably as wisely formed as it could be at that period. I object to it on account of its inequality in the mode of representation. The Assembly, too, is constituted on an arbitrary principle, but that had the power to add to and take from, and by this means preserve some degree of equality. But, sir, it was unjust in its operation, and as the people multiplied, the irregularity was corrected by the establishment of a ratio of representation according to the population.

The Council have the same powers in Legislative action as the Assembly, and I see no reason why it should not be formed on the same basis, as to population, as the other house.

The present mode here sought to be carried out, is unequal and unjust in its operation. The tendency is to give the power of controlling in Legislative action, and if the appointing power is to be given to this body also, to a minority of representation. This would be an anomaly in the Constitution, which I hope will not be sanctioned by the Convention.

This has been a defect from the beginning. The Legislature has taken the liberty to divide and cut up counties to secure political power, and a representative of 5,000 people has been placed on the same basis as one who represents 50,000. The same political power is carried into the Senate, and I desire to know if any member of this Convention, professing to support the rights of the people, will consent to this.

I desire, Mr. Chairman to see the political power equally distributed as nearly as may be done. If the Senate is formed on the basis proposed, the representatives of 120,000 will control the representatives of 250,000, and I ask, sir, should this be? What is there in any county which should give it a claim to representation? A county may be altered or changed. The idea is, that the representation should be based on the number of souls—on the population. See how careful you have been to secure to every man the right of his vote, and yet, by adopting this

mode of constituting the Senate, you disfranchise some 35,000 citizens. There is no occasion or plea for it, except the plea of ancient usage. We came here to correct this—to distribute equally the political power, and to give to all the citizens an equal share of political right.

Suppose Sir, the ocean could invade Cape May and sweep off all the inhabitants but ten. Should Cape May have a member in the Council and be represented there? Certainly not, Sir, and on the same principle there is no reason for it now. This is a self evident proposition, and I feel I should be disregarding my duty, if I permitted this to be sanctioned without at least an effort to procure something better, and more equal in its operations. I wish to propose that the Senate shall consist of only 15 members. I wish to limit the number of the Senators. The business would in my opinion be transacted better and more satisfactorily in a body of a moderate size than in a larger body. I think sixty members for the House of Assembly is too large, but at all events I would limit the number of Senators to 15.

I propose Sir as a substitute for this section, that the number of Senators shall be fifteen. The State to be divided into 5 districts, to consist of counties adjacent to each other, and as nearly equal in population as may be, each district to elect three Senators. The Congressional Districts to be assumed as the basis until the next census, or until the Legislature shall alter the same, or until another U. S. census is taken. This plan I think leaves nothing to overcome but prejudice.

Another advantage and one of more weight will accrue from this arrangement. A member from a single county will be more under the influence of local interests, which are often so construed as to tie them down to those considerations alone. By having the State divided into large districts the members will present more strength, more influence, more character, more independence, and this will enable you to constitute a better House, and if the appointing power as I suppose it will be, shall be given to this body, it will be more stable and influential than by the old mode. The justice of this is apparent to all, and I do not see how gentlemen can look at this question, and refuse to construct this instrument in a manner which shall last for ages—which will be satisfactory to all, but instead of it to construct it on a basis which will not satisfy the public.

But Gentlemen have said they are afraid of the agitation which this would produce. Can anything rest on a rotten basis like this. No sir? The people will not be satisfied, and with the provision as reported, I question whether they would adopt the Constitution, and if adopted it cannot stand. So it was when the House of Assembly was constructed

on this arbitrary principle, the people were aroused, and they agitated the subject until they obtained their rights. In the county which I have the honor in part to represent, we have a population not far from 50000, and do gentlemen suppose that we will be content with this provision any longer than we can help, and although some small county may defeat us for a day, yet a combination of interests will in the end enable us to obtain our rights.

Where you give the people a share of the political power they will use it, and they will rest contented with it, but deprive them of it, and they will not rest quiet under it. Do Justice sir. This is the great principle on which all actions should be founded. Justice supports the throne of the Almighty, and it is this which makes every thing desirable here as well in individuals as in public bodies, and if we cannot have a Constitution based on the principle of distributing political power equally, among the inhabitants, it is not worth accepting. Mr. Condit concluded by offering his substitute [G]that the Senate consist of 15 members, elected in five senatorial districts of equal population, each senator to hold office three years—the Senate to be constituted as at present, until after the next census.

[A]Mr. R. P. Thompson.—However much Mr. Chairman I may respect the opinions of the venerable & respected member from Essex, there are cardinal differences of opinion on this subject, which are irreconcilable. It is out of the question sir to suppose that a member from West Jersey will consent to the adoption of a provision, which will deprive his constituents of political power. Let me ask the attention of gentlemen to the operation of this system—What would be its effect in that portion of the State which I represent in part here? Why sir we should not have any representative. For 68 years we have had a representative in the council, and each year the people have had the privilege of electing one. The proposition strikes at this custom, and will deprive half of the Counties in that section of the State partly of any representation, or in other words we should send three members where we now send six. It is all very well sir to talk of Justice, and how this would operate in theory, but the people sir will ask, what kind of justice is that which deprives us of any representative for three years.—Sir there can be no compromise on this question. I hope sir the report will be adopted as presented by the Committee. I am prepared to yield all my own personal wishes or preferences for any particular object which I may have wished to attain while framing this Constitution. I will go to the people, and advocate for the people any Constitution, which this Convention may give me to carry home, but

with this provision engrafted on it, I know not how I should appear before them. I hope sir the amendment will not be adopted.

Mr. Hornblower. However desirable Mr. Chairman the adoption of this amendment might be, I have no idea that either in the convention or in the Committee it can succeed. It cannot be expected that where a representation of 5000 people is equal to that of 50000 that the people are willing to yield that power, and yet no one will say that is not the plan on which the Senate is now organized, and the minority will forever overrule the majority in that house. Gentlemen heretofore have always contended that representation should be based on population, but here we have the very opposite of this idea, and when it comes to surrendering of political power, we find gentlemen against it, and resisting a proposition that the people of New Jersey should be represented in one branch of the Legislature on the laws of population or taxation.

Mr. Allen was not willing that the vote on this question should be given on the views of the gentleman from Essex (Mr. Condit). He denied the principle that population should be the basis of representation in the Legislature. The object of Government was to protect persons and property, and in the composition of one branch of the Legislature, other prineiples and other interests than that of population alone should be considered. He was willing that in the House of Assembly the old maxim of population and taxation should form the basis, but in the other house he wanted a different standard, and though willing to admit that it was a selfish proposition, one which operates advantageously to Burlington, he disavowed the principle. He was willing to stand on the same footing as a smaller county.

Mr. Allen pointed out the difference between New Jersey and other States in this respect. In New Jersey the Counties were all, or nearly all old. None had been formed out of what was once a wilderness, but in States where the counties grew up as it were, they had a perfect right to arrange their representation on that basis. He was not willing to admit that large cities had a preponderating interest in the Government. We had manufacturing, and agricultural, but no commercial interests whatever. The manufacturing interests in objects of Legislation was adverse to the agricultural interests. The former want acts of incorporation for Banks, and they want a thousand privileges for their own benefit, and the effect is to throw all the burthen on the agricultural interests. This ought to have a check on the constant demands for these privileges, and if this had not been so, New Jersey might now have been situated similarly to Pennsylvania.

He argued that the population of a manufacturing district was different from an agricultural. The one was floating, having no permanent interests in the prosperity of the State and its institutions—the other closely wedded to them and yet in one branch of the Legislature, all those though perhaps not half of them were entitled to vote were classed as population and represented on that basis. He concluded by expressing his opposition to the amendment and hoped it would not prevail.

Mr. Dickerson briefly advocated the report as it was presented, as did Mr. Child.

Mr. Condit again advocated the proposition and Mr. Allen briefly replied.

Mr. Vroom—As a member of the Committee who have presented this report, I may be permitted to make a few remarks. There does appear, as the gentleman from Essex states to be an inequality in this construction of the Senate, and I am in favor of looking at this inequality and remedying it as far as we are able. It strikes me that a view of this question should be looked at more, and that we should dispose of this difficulty as to inequality. We agree that in the Constitution of the assembly, population should form the basis of representation, and no matter what kind of population—whether native or foreign—whether a population having an interest in the soil—a stake on the hedge as it were—or whether a population which can vote. We make no inquiries on this point. It is the population of all classes, which forms the basis. Now according to this basis, some portions of the State, the manufacturing for instance, has derived an advantage in regard to equality in this kind of representation. But this is readily yielded. But they now seek to carry this to every part of the Legislative department. Then it is incorrect. It is carried out in some measure in the Executive department, but as to the Senate it is not proper to place that on the same basis. It never has been in the State of N. Jersey, and would be an innovation unexpected I am sure by the people.

As to the justice of the plan, if the system of taxation should continue, is there not something due to this? Will not gentlemen who advocate the new proposition look at this? Is it not true that the agricultural portion of the community pay the greater burthen of the tax? Take, for instance the County of Somerset, and see what tax she pays compared with that paid by Essex or Passaic. Somerset pays an annual tax of $2500, and is entitled to three representatives. Essex pays $3500 and sends 7. Here, you perceive, the tax falls on the agricultural interest. There is no county perhaps more purely agricultural than Somerset, and no county pays so large a proportion of tax, and according to a calculation recently made, it will be seen that as Somerset pays $2500, if that is put on the basis of population, Essex ought to pay $5852, and yet she only pays $3500, and she would only be entitled to little more than four representatives. Now, should Somerset and other agricultural counties be deprived of any benefit? Should she pay all the tax and be represented the same as those who pay a smaller part? It strikes me there is much in this. It is the landed interest which supports the government, and ought it not to have some influence in carrying it on? You give it indirectly in this way, by some kind of necessity in the upper House. In this point I look at it, and I think there is great justice in the consideration.

It is true, the manufacturing districts have paid a large bonus, but it was for special privileges and special grants, and special immunities which other members of the community cannot expect, and that these are for the benefit of the community; but we ought to take into consideration that for every dollar brought into the treasury by this indirect tax, the State has lost two by the failure of these Banks. I do not intend, sir, to enlarge upon the subject, but I consider it due, that as a representative of an agricultural interest, and as a member of the committee, that I should state my views.

Mr. Field. There is another consideration which should not be passed over while on this subject. The ratio of representation now is one for ten thousand population. In Essex county there are 52,000 inhabitants, and she will only lose the fraction of 2500. But in four small counties where the whole population amounts to only 52,500, and each county loses 2500, they lose 10,000, or one representative. This may occur and certainly does occur. The question was then taken on the first part of Mr. Condit's substitute, viz to divide the State into Senatorial districts of 5, three to each district, which was lost, and he withdrew the other part.

Mr. Vroom then moved to strike out the words *"and each Senator shall have one vote,"* which was agreed to.

Mr. Dickerson moved to strike out *three* (years) and insert *one*.

Mr. R. P. Thompson moved to insert *two* instead of three.

Mr. Dickerson briefly advocated his amendment. He saw no reason why the two houses should serve for different terms. If the Assembly was to be elected annually, let the Senate be also. That was the last point he was sure, on which the people wished them to economize. They always had had an annual election and in his opinion the condition of the country required it. He wanted to see no distinction

between the two bodies.

Mr. Ewing said he was at first willing to go for the term of three years, but as it was, and as there was every prospect that the power of appointment would be vested in that body, he should go for the amendment.

Mr. Vroom. It becomes me Mr. Chairman, as a member of the Committee reporting this bill to say something on this point. I must confess I am disappointed in some of the motions made, and the feelings expressed in relation to the terms of Senators. This provision has not been adopted without due reflection and interchange of opinion, not only with members of the Committee, but with various members of the Convention. The question arose in regard to the office of Senators and it was naturally connected with the term of the executive and with the prospect of an annual or biennial election. They are necessarily connected. To limit the term of Senators for two years would limit the term of the governor. But all parties harmonized on this point, and made his term three years. We have divided the Senators into three classes, one third to go out every year, and we proposed this plan on the idea that the executive would be elected for three years, and in this we concur with the report of the Committee on the executive department.

The reason—the great object of fixing the terms of Senators at 3 years, is not only because they are connected with the Executive, but by this means the Senate will be a more permanent body than the House of Assembly. We shall aid in carrying out the final objects which the people had in view in the framing of this Constitution, stability, and we will prevent excessive and imperfect legislation. It was supposed that, by having the term of office longer, the people would be more careful whom they entrusted with power. They would select the best, the wisest, and the soundest men. Then again, if the Senate has more stability, it was supposed they would prove something of a check on the lower House. That needs to be checked and watched, and though we may say the people do not want to be protected against their own immediate representatives, yet experience has taught us that there is need of a check in the popular branch. We have refused to place the veto power in the hands of the Executive, and all checks must now be reposed in the Senate, & if we intend that the appointing power shall be placed in this branch of the legislature, it is a strong argument for making it as stable as it will be by the plan reported. If the Senate is elected annually, you will have a changing legislature, as we always have had. It strikes me that it is the desire of the people to discriminate between the branches of the legislature. If we mean to give the Executive any power, the advisory, the conservative power should be in the hands of the Senate. But my friend behind me (Mr. Dickerson) is in favor of giving the Governor no power at all. If that be so—if the Governor is to be elected merely, for the honor and the salary—if he has no power at all, so far as the Senate is concerned, it would present a different view. Then have the Senators elected annually—have a Governor without any power, and give the power of appointments to the joint meeting—But are the people of New Jersey prepared for this? No Sir, they are not. If there is one feature in the old Constitution obnoxious to the people, and which they wish to see blotted out, it is the form of appointment by joint meeting.

On the principle, then, that there will be a change in the appointing power, the advisory, or confirmatory, or negativing power should be in the Senate; and it has been deemed advisable to make their term of office 3 years. Unless we are prepared to go back to where we were before—to have more stability in our legislature, we shall abide by this report—give to the Governor a term of 3 years, and to the Senators the same.—They will be divided into three classes, and one-third will be elected annually, and the two-thirds will be gaining in experience and information. I am alarmed at the motion—I mean, Sir, I am afraid if this principle is engrafted on this part of the Constitution we shall fall back where we were when we came here, and go back to the people with a Constitution in its main features no better than the one we have had for years past.

Mr. Clark. I concur most sincerely, Mr. Chairman with the sentiments just expressed. It was the design and the desire of the Committee to place a different class of men in the upper House. Not that I would assume that one man is any better than his neighbor, but where you enlarge the term of your agent, you invest his office with a dignity, and solemnity, an impressiveness. And I put it to the gentlemen here if they were to select an individual to serve them for one year, or one for three years, whether in the latter case they would not select a better and a different man? There would be more deliberation, more reflection before they made their choice. Sir, such is the fact, and it is important that it should be so; and if this provision is engrafted on our Constitution, we shall see our Senate hereafter composed of "grave and reverend signors," as representatives of the people. They will be, Sir, representatives of the patriotism, and not of the partisans of the state. We should have at least one portion of our representatives who would not always yield to, and be carried away

by party excitements of the hour. It is right and proper that the impulses of the people should be gratified, should be wasted, should be exhausted Sir, in the House of Assembly. And in that portion of our representatives I am quite willing to see such a body of men, who represent the impulses, the excitement, the feelings of the people. But, Sir, I want to feel assured that notwithstanding all this exists in that body, there is another body above them who will not be alarmed by these storms, who will not be swayed by these feelings. And would it not be so? The members will be schooled in a state of feeling which we desire to see in that part of the Legislature.

After a few more remarks upon the propriety of having the Senators elected for three years, Mr. Clark concluded by expressing his deep regret that the motion to amend had been made, believing as he did that this provision which he advocated, would have commended itself to the heart of every member of the Convention.

Mr. Dickerson again advocated his amendment, urging as one reason in favor of it, that in the Senate of the United States the members had already grown so aristocratic that it was considered almost insulting to address them as *gentlemen*. They must now be hailed as "*Senators*."

Mr. Zabriskie advocated the amendment. He said,

If the effects described by the eloquent member from Hunterdon (Mr. Clark) would be realized by continuing the proposition as reported, it would receive my hearty concurrence. The gentleman argues that by simply increasing the tenure of offices you will add to the dignity and charatter of the individuals who will be selected to fill the places. Sir, under the old Constitution much higher motives existed for the exercise of a careful discrimination by the people. The old councillors were not legislators only, but they likewise constituted the high Court of Errors and Appeals in the last resort. They adjudicated all those high interests always involved in the action of all the judicial tribunals of the State. Not only so, but they composed the Court of Pardons authorized to exercise the highest powers of sovereignty that can be delegated or exercised. If under such circumstances men of proper dignity of character were not selected, can it be supposed that the increase of the tenure of office would secure that purpose? Particularly when the Senators are stripped of all save legislative duties? How has this system worked elsewhere? Without a reference to the States let us look to the U.S. Senate. And I put it to the candor of the gentleman from Hunterdon to say whether the same popular influences that have operated upon the House of Representatives have

not produced a similar effect upon the U.S. Senate? I affirm that they have. What security is afforded them for the superior dignity of that body? None sir, none whatever. As good men were selected under the old system as can be secured under the new. No expression of the popular will has indicated a desire for change in this respect. And no reasoning to which I have alluded has satisfied me of the necessity and propriety of altering this feature in our Constitution.

I likewise dissent from the remarks made by the gentleman from Somerset (Mr. Vroom) and the gentleman from Essex (Chief Justice). In addition to the security that this feature provides against party legislation (as argued by those gentlemen) it likewise checks and controls the appointing power. The member from Essex asks whether it is supposed that if the Council last year had been constituted upon this plan so many improvident acts would have been passed. In reply I state that a large majority of the last Council held seats the year previous and many for two years. Yet, sir, laws which the gentleman alleges were improvident were passed. Then practically by the gentleman's own showing, no benefit will result by a change. The great conservative power, and in my opinion the only one that should have reached all the important results to which gentlemen have referred has been stricken out. I refer to the veto.

But annual elections of the Senate will operate as a check upon the Governor in his appointments. If the Senate and the Governor be both elected for three years the probability will be that both will be of the same party, for the same influences that operate to elect a Governor will elect a Senate likewise.

Mr. Hornblower opposed it.

Mr. Green produced the *Manual* of the State Legislature, and read amid much laughter the rules of order for the government of Council, by which the members must be addressed as "Councillors." The gentleman had apprehended danger from this innovation from the fact that the Senators in Washington had ceased to be called gentlemen. Perhaps it was a misnomer, and if so it was time the term was dropped.

Mr. Green briefly advocated the report, & pointed out the advantage which the Southern states have derived from the North by keeping their Representatives and Senators for long periods in Congress, and the same benefit in a comparative degree would ensue to New Jersey by this change in the tenure of office of Senators.—They would become more experienced, and competent for the performance of their high and responsible duties.

Mr. Hornblower reminded Governor Dickerson that he (Gov. D)

had been in the Senate of the United States 16 years, and he was yet the same noble high minded gentleman.

Mr. Marsh advocated the amendment, disclaiming the idea that the people would select any better or wiser men as Senators because their term of office was enlarged.

The question was then put on Mr. Dickerson's amendment, (Mr. Thompson having withdrawn his,) and it was lost.—Ayes 14, Nays 37.

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

On motion of Mr. Clark,

The convention adjourned till this afternoon, at three o'clock.

At three o'clock the convention met, pursuant to adjournment.

The vice president presented a communication from the secretary of state, transmitting, pursuant to the resolution heretofore passed, a list of appointments of judges and justices, for the several counties in this state, from 25th October, 1839, to 13th March, 1844: 652 judges and 1395 justices in the State.

Mr. Hornblower moved it be printed, which motion causing considerable debate he withdrew it.

On motion of Mr. Ryerson,

Ordered, That the same do lie upon the table.

On motion of Mr. R. P. Thompson,

The convention resolved itself into committee of the whole, Mr. Cassedy in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on the Legislative Department.

Mr. Vanarsdale offered an amendment that the Senators shall hold their office for *two* years instead of *three*.

The alteration from *one*, as at present, to *three* years is a considerable one. I am favorable to some change, but I think *three* will be too long. *Two* would be moderate; and if the people indicate by their acts, what their wishes may be, they prefer *two*, for they now usually elect their Senators for that time. By this mode there will be no difficulty in dividing them into classes and I think it will be more acceptable to the people.

Mr. Hornblower hoped it would not be adopted. It will derange and upset all we have done, and after the decisive vote of this morning, he hoped that decision might remain. All the argument of this morning is applicable to this amendment. I am willing that the popular

branch shall be all elected annually, but I want this conservative principle in the Senate. It will put that body above those political tempests which sometimes sweep over the State. The gentleman from Essex is not a political agitator, and does not see much of the storms of politics. If he did, he would be willing to throw a *quietus* upon it, if possible. *Three* years was adopted this morning by a decided vote, and I hope it will not be disturbed.

Mr. Ogden had listened with pleasure and improvement to the debate of this morning—but he could not agree with the Chief Justice, that the decision of that question decides this. That made the term *one* year instead of *three*. This makes it *two*. The reasons given in favor of the permanency of the Senate, are strong—but we may do too much. The people have been in the habit of electing their Senators annually, and now we propose that they shall elect them for *three years*. There is much force in what the gentleman from Essex says that the people may be willing to make it *two* years but not *three*. I am willing to go for anything that will make the system as perfect as possible, but not to endanger the Constitution. But by making it *two* years, a political tornado will not change the whole Senate. Only one-half will be elected and go out every year. Neither can I see how it will derange our present plans at all. It will not affect the election of Governor, for the only difference will be that one-half instead of one-third of the Senate is elected with him. Neither will it affect any other part of the system, injuriously.

But this amendment is entitled to great consideration, on account of the source from which it comes. That gentleman does not bring many propositions before us; and when he does so, we may be sure, he has looked at them in all their bearings and is prepared to sustain them by his deliberate judgment. I therefore hope the amendment will be sustained by the Convention.

Mr. Marsh suggested another reason. If we make it *two* years, and the constituents see fit, they can re-elect their Senators, but if *three*, that would keep them in office six years, which would be objectionable.

Mr. Brown. Mr. Chairman, I confess I like the report as it stands. One of the prominent evils of the old Constitution and one which is felt by the people as much as any other, is that every year, the strongest efforts are made to bring about a political revolution, in order to change the political character of the appointments and legislation. That has been a great evil, and the committee seemed to have endeavored to prevent it. My colleague (Mr. Vroom) this morning reflected accu-

rately the sentiments of the people of Somerset. They do not desire this continual change. They are an agricultural people; and seek security and permanency, but not change, and if before we rise we shall not effect this object, we shall have effected but little. The gentleman from Passaic seems to fear that this will not be in accordance with the wishes of the people. I think differently. But it is impossible to know with certainty what the views of the people are upon this subject; we must act from the convictions of our own judgment, and if we are satisfied that these evils exist we should endeavor to rectify them. I am clearly of the opinion from my intercourse with the people that they desire that our Government shall be more permanent; that it shall not be changed by the election of every Legislature. I think if we adopt the report we shall give the people rest. We all deprecate the fact, that every October brings an election that involves the feelings of all of us toward our neighbor. The popular branch which is elected annually, reflects the will of the people—If the Senate by being elected for three years, does not, the popular branch is a check and guard upon it. The Senate has no power, and can do nothing without the consent of the Assembly. I speak now of its power to enact laws. As to appointments, that comes up in the report of another Committee and must receive separate consideration. But I am satisfied that if we adopt this report (in this particular) we shall adopt a plan as perfect as we can make it.

Mr. Ryerson. It is always safe to refer to the lights of experience; and that teaches us that this arrangement of the Senate is a salutary power, and tends to prevent hasty and unstable legislation and prevents any sudden changes by a political revolution.

Look at N. York in 1837, when the Whigs swept the State like a tornado, and had a very large majority in the Assembly. How stood the Senate?—Every Senator elected was a Whig, but the previous democratic majority maintained the ascendancy of that party; and prevented all party legislation while good laws received the support of all.

So in Congress. By a sudden change, a large majority of the members returned to the House of Representatives last winter was democratic, while the Whig Senate still remained; and the people of N. Jersey already see and feel the beneficial results of it, in the continuance of the Tariff; although I do not wish to be understood as entirely approving of the present Tariff. There are many objections to it, but instead of being laid on the table by the party in the majority in the House, it would have been swept by the board if they had had a majority in both houses and if it had not been for a Whig Senate.

Mr. Field concurred in the views of the gentlemen from Somerset and Sussex. I will not weaken any thing which they have so well said, by repetition—but my object in rising is, to remind members of what passed when the question of giving our Executive the veto power was before us. Was it not taken for granted by all that our Senators were to be elected for three years, and was not that used as an argument against the veto, that this constitution of the Senate would be a sufficient check upon hasty and bad legislation? Sir, the votes of more than one member upon this floor, were given against the veto, which would have been cast differently, had it not been for this provision. The gentleman from Passaic fears that the people will not be satisfied if the Senators are to be elected for three years—and we have often heard the objection urged against those features which will give stability to our Government, that the people are not prepared for them. Sir, against such sentiments, I desire to enter my protest. If there is any one thing which the people of New Jersey ardently and cordially desire to see in this Constitution, I believe it is this very feature. I was very anxious too, that a vote of two thirds of the Legislature should be required to submit to the people, future amendments to the Constitution, but that proposition was voted down, and I must be permitted to say that I believe none would have been more acceptable to the people, than that. I admit that I am not conversant with the people of the State, generally—but all whom I have heard speak of it, say that they regret that result: and I believe that if we alter this provision of the report now before us, the people are the very ones who will find fault with us. Sir, we are very apt to mistake the politicians of the State for the people. Politicians have voices louder than those of the people, and they may object to this provision, but the sober quiet people of N. J. will not.

Sir, I am not sure but that I should prefer the Senators to be elected for *one* year, rather than for *two*. We have been told that the people are accustomed to annual elections. There is much force in it, and I am not willing to alter the old Constitution at all in this respect unless very decided and substantial benefits will result from it, and I am not satisfied that to elect the Senators for *two* years only, would produce them. I concur entirely with the Chief Justice, that it would derange and unsettle the plans which we have already agreed upon. I do not know how it may strike others, but if this amendment is adopted I shall not be willing to give to the Governor and Senate the appointing power. If the Senators are elected for three years I shall be per-

fectly willing to do so—but not otherwise.

I hope the amendment will not receive the sanction of the Convention.

When I saw the report and read this feature my heart beat with joy, and I could not but feel grateful for it to the chairman of the committee. I am prepared to sanction the report with one or two trifling exceptions. I regretted to hear the amendment proposed by the gentleman from Essex and supported by the gentleman from Passaic, with so much ability, and although their opinions are entitled to great weight, but I hope it will not prevail.

Mr. Naar. The gentleman from Somerset seems to be opposed to annual elections and thinks that the worst feature in the old Constitution. I think it is the best feature. New Jersey is now free from debt and in a prosperous condition. I attribute that, in a great degree to these annual elections—these searchings of their representatives by their constituents. There is no more conservative principle than that. The representative knows that the eyes of his constituents are upon him and that unless he behaves properly he cannot be elected but once. I am aware that there are some dangers to be apprehended from party legislation, but they are not equal to the benefits of this annual accountability. I was in favor of having the Senators elected annually, but that is settled differently. If the Senate was constituted upon a popular representation, there would be some fairness in it, but we have given the smaller counties the power to control the larger ones.

The true conservative doctrine is to send the election down to the people as often as possible—and if we elect the Assembly annually, the Senate every two years and give the Governor the qualified veto which we have given him, we shall have a healthy system of legislation—one that is both democratic and conservative.

But I do not know why the Senate should be elected only as often as the Governor. There is such a thing perhaps as being too conservative.

Mr. Brown. The gentleman misunderstood me. I am in favor of annual elections. I only object that at every election, the complexion of the Legislature should be entirely changed. I want the members of the Assembly to be elected annually but not the Senators.

Mr. Vanarsdale's motion was lost 18 to 31.

Mr. Parker moved an amendment to the 4th section, that the number of members of the Assembly shall never exceed 60. He wished to prevent the subject of representation from being made a matter of management or agreement. The N. York Assembly is limited to 112, and Penn. to 100.

Mr. R. S. Kennedy advocated it. He said if our ratio was the same as in Penn. we should have but 20 members, and if the same as N. York, but 16.

Mr. Browning thought that might be safely left to those who come after us.

It was agreed to 24 to 18.

Mr. Child. (by request) moved to reconsider the vote.

Not agreed to.

Mr. Randolph offered an amendment that no bill shall be passed on the same day it was introduced. He said the most hasty and injurious legislation was effected, by dispensing with the rules at the close of the session.

Mr. Pickel opposed it.

Mr. Vroom had no objection to it, if it was thought necessary, but in case of war or any sudden emergency, it might embarrass. [C]Not agreed to.

[A]Mr. Halsted moved an amendment to require a new apportionment of members after every census—He thought this was not plainly required by the article, and inquired of the chairman if he so intended it?

Mr. Vroom. We did, sir.

Mr. Halsted. If the article is sufficiently plain, I am satisfied.

After some conversation among several members, Mr. Parker offered an amendment that the Legislature shall make a new apportionment after every census, [C]and not to be altered till the next census. [A]Agreed to.

Mr. Hornblower moved to strike out that part of the 11th section [C]restricting the pay of members of the legislature to three dollars during the first forty days of the sitting, and to $1.50 thereafter. [A]He felt a repugnance to putting an article of that kind in our fundamental law to go down to posterity. He thought it would appear to have been dictated by narrow notions and parsimonious views. While we allow the Legislature chosen by the people, to enact laws for the protection of our lives and liberties, and affecting our dearest rights and interests, we dare not trust them to fix their own pay!

He opposed the article at length as undignified and unmanly and said the relative value of money might change, so as to require an alteration of the Constitution. He was willing to trust the people.

Mr. Randolph opposed it on the same grounds, and thought it would not have the desired effect to shorten the sessions.

Mr. Vroom replied. He said it was easy to talk in a patriotic way,

when our sentiments are to go forth to the people. But when we are talking among ourselves, let us answer the question honestly—has not the Legislature been in the habit of sitting too long, and would they have done so if it had not been for the compensation? Now that's the feeling of all of us—and why not express it? If there is any other way to remedy the evil, let it be suggested. But the evil is a crying one—and now gentlemen say, why can't you trust the Legislature? We have trusted them a great while, and we see what our trust has come to! Now let us adopt some way to shorten the sessions. By cutting off the first sitting, we shall attain the object in part; but will not this article attain it more effectually? If any thing more than this can be done, I should be glad to hear it suggested. If gentlemen think that what we complain of is no evil, let them come forward & say so. But, I apprehend, no one will say that the sessions have not been too long—or that the *per diem* pay has not had the effect in part to produce it: or that it would not have had that effect upon ourselves if we were members. We may talk loudly of our patriotism, but we are human nature after all.

We have a right to say what is a sufficient *per diem* allowance, and how long the session shall continue. We might say it shall continue but 40 days at $3 per diem—but we say in the report that if they remain over that time, their pay shall be reduced one half, If any one won't come to the Legislature under this category, why let him stay at home. But I believe there will be no difficulty of this kind. Better men will consent to come—men who can't afford to come now and spend ten weeks in the middle of the winter. But I am not tenacious of this article if the Convention do not think proper to adopt it. Our only object is to shorten the sessions.

Mr. Hornblower further advocated the striking out.

Mr. Parsons opposed it—and preferred this article to any other in the report.

Mr. R. P. Thompson had hoped the Chief Justice would have exhibited the same sterling principles of democracy now as heretofore and would have stood by us on this occasion. He could not but look around him and exclaim as Mr. Webster once did, "Where am I to go," when I find that gentleman occupying the same platform which I have heretofore. If he was not mistaken this would be a more popular measure than any other. He further advocated it, as did also Mr. Ewing and Mr. R. S. Kennedy.

Mr. R. S. Kennedy was opposed to the amendment. The Chief Justice considered this "small potatoes." It is very possible for Gentlemen in the receipt of high salaries, to look upon economy as a small matter. His motto may be, take care of the dollars, and never mind the cents. But the people in general take a different view; their motto is to take care of the cents and let the dollars take care of themselves; and I see no good reason why these principles should not be carried out here. But it seems to me that some persons have two consciences in this matter; they believe in economy with respect to their own concerns; they believe in taking care of their own money, and that the man who neglects to provide for his own household is worse than an infidel, but with respect to Uncle Sam's money they have a very different feeling, they look upon economy in public matters as very "small potatoes." I don't believe in this distinction. But the gentleman asks, will you not trust your own agents! I reply, No Sir.

If I permit a man to put his hand into my pocket, I want to know to a cent how much he is going to take out, and the Chief Justice I presume would do the same thing. If his honour was to employ a man to perform a certain duty, would he give him the key of his desk, and tell him to take for his compensation as much as he chose? No, no, he would do no such thing. Or would his honour think it indelicate to make a bargain beforehand what his agent was to have for his services? I think not, neither do I think there would be any indelicacy in fixing the time in which we expect our agents to perform their work. This is an every day practice. The employer claims to be a judge of the term required to perform the service, and as he has half the bargain to make has he not a right to employ his agent for any length of time he chooses? or say if you do not perform my work in a reasonable time your compensation shall cease? And as the Constitution is a bargain of the people's own making, have they not a right to say to their Representatives, "so far shalt thou go, but no farther."

Mr. Chairman, a great deal has been said about honesty. Now, sir, I believe in the honesty of the People in general but not in particular; that is I believe the people in general are honest in their private dealings with another, but when it comes to Uncle Sam's money, then grab is the game. I hope therefore the amendment will not pass, but that we will permit the people of New Jersey to carry their own keys.

Mr. Hornblower said, the gentleman from Salem does not seem to know exactly where to find me. He seems to think I have got to the windward of him. If I have, I mean to keep it. He thinks he is democratic and I not—but I am willing to trust the people and he is not. Who is the people's man?

Motion to strike out not agreed to.

[G]Mr. Wood moved to reduce the pay from $3.00 to $2.00. Not agreed to.

[A]Mr. Parker moved to strike out the half pay part.

Not agreed to.

Mr. Schenck moved as a substitute, that the pay of the members shall never exceed $120.

Not agreed to.

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

On motion of Mr. Zabriskie,

The convention adjourned till to-morrow morning, at nine o'clock.

[J]Saturday morning, 8th June.

At nine o'clock the convention met, and was opened with prayer by the Rev. Mr. Young.

On motion of Mr. Allen,

The convention resolved itself into committee of the whole, Mr. Cassedy in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on the Legislative Department;

[A]Before proceeding to the discussion of the report, Mr. Parsons asked the attention of the Committee for a few moments. He said—

I have not occupied the time of this Convention with unnecessary debate to court popular favor, and neither am I directly or indirectly interested in the result of its labors, other than the humblest citizen in the State: I hold no office in the State, County, or Township, other than the one I now have the honor to hold on this floor, and consequently feel more disinterested than some honorable gentlemen who hold office, and who may be affected thereby, and it would in my humble opinion better comport with the dignity of such if they would monopolize less the valuable time of this Convention with their too frequent long speeches, upon every subject that comes before the Convention.

I have endeavoured while I have been in this Convention to add what little I could to the labours of it, but I have not assailed any one

here, nor their motives, for I deprecate personalities here or elsewhere, but when made to me I will resist them and endeavour to return them with interest.

The Hon. Chief Justice, in his reply yesterday afternoon to the remarks I had the honor to make, as well as to those made by the members from Salem and Warren, told an anecdote of the formation of the Police in Paris and stated that they selected rogues to catch rogues. Now Mr. Chairman I did not at the time take any part of the remarks as applying personally to myself, nor to my constituents, and was willing to let them pass for what little they are worth—which was in my opinion very little any way, and less than the Hon. Gentleman's expression of small potatoes; but as I understood after the adjournment of the House that many members were of opinion that the remarks were intended exclusively for myself and those that I have the honor, in part to represent, I now call upon the Hon. Chief Justice to state to the Committee how he intended to apply the anecdote at the time he related it?

Mr. Hornblower explained that nothing was further from his thoughts than to say any thing harsh or unkind, or which could be construed into such, all was said in jest, but if the gentleman had understood it otherwise he was heartily sorry and tendered his apology.

Mr. Parsons expressed himself perfectly satisfied with the explanation.

Section No. 11.—Gov. Vroom said he intended to prepare an amendment with reference to an extra Session if necessary, but had not had time and hoped it would be passed over for the present—agreed to.

Section 12.—Mr. Vanarsdale suggested that the last paragraph required much consideration. It gives a latitude which in some cases might not be allowed.

[G]Messrs. Vanarsdale and Allen objected to the provision that the members of the legislature for any speech or debate, in either house, shall not be questioned in any place.

They contended that members often abused their privilege and in such abuse they ought not to be protected.

[A]Mr. Vroom suggested that the officers of the House would attend to that. If order was not preserved, all the constitutional provisions in the world could not help it.

Mr. Allen would like to see something done with it. Suppose an Editor chose to animadvert on something which a member had said in the course of debate, might he not be sued for a libel, because it

was in violation of a constitutional provision? He moved to strike out that provision.

Mr. Zabriskie hoped it would not be struck out. The same rule should be preserved here as elsewhere. The press had animadverted on the conduct of our members in Washington, and no action had been taken upon that. It was a very proper provision, and should be retained.

Mr. Ewing said it was only if they abused or libelled a person members were liable to actions.—This takes away no accountability from a member.

Mr. Vroom said it did not privilege a man from having his conduct adverted to. It was only to protect him from actions for libel, for any thing which he might say in the course of debate.

Mr. Stokes thought the provision was to say the least of it ambiguous and seconded the motion to strike it out.

Mr. Vroom asked if he in his seat as a member should find it necessary to speak of a public officer, would he like to have him turn about and sue him for a libel? Would he like to be deprived of this privilege? In this Hall yesterday we animadverted pretty severely on the conduct of former Legislatures, and how would the members like it to find themselves subject to actions for what was then said?

Mr. Stokes thought it precluded a constituent calling a member to account at all. He could not conceive how any other construction could be put on it.

Mr. Spencer moved to strike out the word *questioned* and put it *"held responsible."*

Mr. Ewing held that a member was accountable any where for any injury he might inflict. This would lead to personal abuse and injury, and eventually to personal hostility and revenge. He was willing to protect a man in the performance of public duty but every man should stand answerable for the injury he should do to his neighbor by any thing he might say in a public body.

Mr. Parker read the clause in the federal constitution, in the same words as the clause in the report. The object, he took it to be of the clause was to ensure freedom of debate.—A man in a public body occupied a different station from a man in society. If he knows of abuses committed, he is bound to oppose them. He is placed as a sentinel on the Watch Tower and is bound to give warning when he sees his country in danger, and if he is liable to be questioned out of doors by any man he meets, where is the freedom of debate, and what privilege is there in being a legislator? If he was to go in his private capacity, and accuse an officer of doing wrong, he might knock him down with great propriety, but if in the Legislature his mouth should be stopped, how would they check the torrent of corruption! He was sent here to say so, and should think he neglected his duty, if he did not expose whatever he saw wrong, in any public officer.

Mr. Allen said if the language referred only to that he would not object to it, but he thought it went too far, and exempted a man too much from every responsibility. The members in Washington say what they please not only about public offices, but private persons, and when they are called to account, they plead their privilege. He believed it would be wise to do away with that provision entirely. How are they to discriminate between public offices and private individuals, and as there was much ambiguity about it, it had better be struck out entirely.

Mr. Parker, said if a member went beyond his bounds he would be called to order and that was the proper way to check them. It was a provision only intended to protect the freedom of debate.

Mr. Allen again insisted that the provision was too broad. A member might call another a rogue, a rascal or a liar, and yet he was shielded by a Constitutional privilege. It is true he might be called to order, but the injury would have been done, and the words published to the world. If a member could be called to order, and checked before he had spoken the words, it would all be very well, as the injury might thus be checked, but that could not be done. He thought the provision too broad and it ought to be struck out.

Mr. Green read from Story's commentary on the Constitution, and after a few pertinent remarks, Mr. Allen expressed himself convinced of the propriety of the section, and withdrew his amendment. Mr. Spencer's motion "held responsible" was not agreed to.

Section 13. Mr. Vroom said although he was satisfied with this Section as reported, yet he was not prepared to say they should not go further and let the provision read so that no member of the Legislature should be appointed to *any civil* office.

Mr. Zabriskie moved to strike out all after the word *State*. He said, the history of past Legislation teaches us Mr. Chairman that members of the Legislature have shaped their whole course with the view to secure an office to be appointed at the last joint meeting. This amendment effectually takes from them that power and motive, and it should be our object in framing this Constitution so to frame it as to take from them every motive but that of the public good.

The amendment was agreed to, but re-considered at the suggestion of Mr. Green, who said I desire Mr. Chairman not to take up any more time than may be necessary to the proper understanding of the

business now before us, but I wish to ask a single question. The section as it stands prevents a member from securing any office which shall be created during his term, but as amended it provides no member shall be entitled to be appointed to any *civil* office. Now while I am in favor of this proposition I do not think we should adopt it hastily and without a due consideration of the consequences. For instance at the next session of the Legislature, if this Constitution shall be adopted, there will be many offices to be filled, and will it be expedient to shut out any member from being appointed or holding office? It generally happens that we have in the Legislature, men from every county of prominence and distinction, and I ask is it best to shut them out entirely. This sir is a great and grave question, and I moved the re-consideration as I saw the members had evidently voted hastily. As at present advised I am in favor of the proposition of the gentleman from Middlesex, and especially am I in favor of that if the power of appointment is to be given to the governor. Thus I conceive evils would arise, which are to be deprecated. The Governor is to be chosen for three years, and if he is to have the nominating power and the Senate the power of confirming, I can well see the necessity of such a provision.

Mr. Ewing fully concurred in the views just expressed, and was decidedly in favor of the amendment.

Mr. Parker enquired how far the word appointed carried the provision? Does it preclude the Legislature from choosing one of its body a Senator to the Congress of the U. S.?

Mr. Field. That is not an office within the authority of the State.

Mr. Parker was willing that the provision should go so far as to exclude members from being appointed to any civil office.

Mr. Hornblower saw no reasons for making any distinction between an U. S. Senator and a minor office. The provision ought to extend to one office as well as another. [He] [C]should vote against the amendment upless we also exclude members from appointments as Senators.

Mr. Hornblower made a motion to that effect.

[A]Mr. Browning was in favor of the amendment. The section as reported amounts to nothing, or to a very little. We all know that very few offices are created during a session, or during the time for which the Senator is elected, and to exclude members only so far, is really doing very little. I wish to strike at the root of the evil. To get at the source and dry up the fountain of corruption. It is a well grounded cause of complaint in the Federal Government, and in those States where this relation exists between the Governors and Legislatures, that

favorites will be rewarded—favors extended, so long as the opportunity exists.

Mr. Field asked the Chief Justice what right we had at all to declare whether a man shall be eligible or not to the Senate of the U. S. because he is a member of the Legislature. The Constitution of the U. S. fixes the qualifications for that office, and we have no right to add to or take from them.

Mr. Hornblower. I see no force in the remark. The appointing power has a perfect right to regulate their own appointments. The Legislature would have a perfect right to exclude a man from the Senate of the U. S. of a disreputable character, or who was stained with crime.

Mr. Field admitted that we might regulate the manner of appointment, but have we a right to say who shall be appointed.

Mr. Naar thought the section could be better amended by striking out the word Civil and inserting "except such as he shall have been elected to by the people."

Mr. Green. Let me make a single enquiry, would this exclude a member from being elected to any office by the people.

Mr. Vroom. It was not so intended, but in order to have the section so as to meet all his views I am willing to go further and adopt a provision of this kind, that no member of the Senate or Assembly shall receive any civil appointment from the Governor and Senate or joint meeting during his term of office.

Mr. Zabriskie accepted the amendment.

[G]Messrs. Naar and Hornblower withdrew their motions.

[A]Mr. Green. I have still another question to ask. Is there not danger if you adopt this, that the best men—those whom we would like to see chosen Senators would be deterred from accepting the office? Is there not danger that by accepting the office of Senator for three years, they are in a measure disfranchised? A gentleman thus situated might desire to go to the United States' Senate, but you prevent him. Is there not danger in doing this that you will shut out the best men from the Senate and Assembly?

Mr. Zabriskie. The question, Sir, implies that a gentleman would be deterred from going to the Senate by the motive that when he takes his seat he looks higher, and would decline on this ground, that he would thereby be debarred from reaching the United States' Senate. Sir, a gentleman who would take a seat in the Senate with such a motive, ought not in my opinion to have one.

Mr. Green said he did not impute or imply any such motive.

Mr. Zabriskie. Still the motive seems to be there, and it was my

design to prevent such a motive from operating. I wish to prevent them from coming to the Legislature, and by their influence as members secure an advantage over other and equally worthy citizens—The history of legislation in this state shows that such has been the case, that members came to the Legislature only to secure appointments for themselves or friends. The time never has been when the people of New Jersey could not get the best men for these places, without looking to the Legislature for them.

Mr. Ewing concurred in the sentiments of the gentleman from Middlesex.

Mr. Wurts. I am satisfied with the section as reported, and have heard no argument which has induced me to change my opinion, but my vote on this question will be influenced and determined by the action which the Committee may take with reference to the appointing power. If all the officers are to be appointed in joint meeting, I shall go for any amendment which will exclude members from accepting office during their term of service. But I hope it will be changed and divided, and I wish to believe that this Convention will entrust to the people the election of their officers.

The patronage of the Governor and Senate is limited to a confined space; and if you restrict the members of the Legislature from all appointments, the state may suffer great injury. Suppose the office of Chancellor should become vacant, and the very man on whom all eyes were fixed as the one most competent and proper to fill it should be in the Senate. The Governor cannot look to either House to fill the office, and the state must suffer. The same effect would be produced if a vacancy should occur in the office of Chief Justice or Associate Justice of the Supreme Court. Under the old system of appointment, members undoubtedly had an advantage over other citizens, but in the change of this power, that would cease, and I am in favor of the section as reported.

Mr. P. B. Kennedy was opposed to the amendment, but he thought the section would be more acceptable if the word *"civil"* was struck out, and *"county"* inserted.

Mr. Hornblower said he was so convinced by the reasons advanced by the gentleman from Hunterdon, that he should vote against the amendment, and for the section as reported.

Mr. Mickle opposed the amendment, as did Mr. Parker.

Mr. Field again called attention to the provision in the Constitution of the United States, and insisted that the Convention had no right to interfere in the matter.

Mr. Halsted said there was one argument which had not been advanced, that was, that with reference to the abuses of the appointing power in the Federal Government by the appointing members of Congress to office. That was no doubt done by the President with a view to a second term. Here, however, the Governor was ineligible for a second term, and therefore he would not be influenced by such a motive.

Mr. Brown was in favor of the section as reported.—The people had already expressed their sentiments on this subject, and public sentiment would be found as great a restriction as a Constitutional provision.

Mr. Vroom said he had been placed in a false position before the Convention and before the public on this question. He was in favor of this section as reported, but when the amendment was offered by the gentleman from Middlesex, (Mr. Zabriskie) I offered this one to meet the idea of the gentleman from Essex, (Mr. Hornblower) and I did so to harmonize this section. The majority of the Committee who reported this bill, were in favor of the section as it is, and after this has been so freely talked over and discussed, I have come to the conclusion that the report is the safest. I withdraw my amendment.

Mr. Zabriskie. It is mine, Sir. I accepted it, and I adhere to it.

Mr. Allen advocated the report without the amendment.

Mr. Zabriskie again advocated his amendment, and after a few remarks from Mr. Stokes on the same side, the question was put, and it was not agreed to.—Ayes 13. Nays 18, leaving the section as reported, excluding members from all appointments to offices which have been created, or the emoluments whereof have been increased, during their term of service as legislators.

On motion of Mr. Sickler, the committee rose, reported progress, and had leave to sit again.

Mr. Field offered the following, as a substitute for Art. XXII of the report of the committee on the Legislative Department:

"No law for the creation of a township or county shall take effect until it shall, at a special election, to be ordered for that purpose, have been submitted to the people residing within the bounds of such proposed county or township, and have received a majority of all the votes cast for and against it, at such election: and no law which has for its object to annex a county or township, or any part thereof, to another county or township, shall take effect until it shall, at a special election, to be ordered for that purpose, have been submitted to the people residing within the bounds of the county or township, or the part thereof, thus proposed to be annexed, and have received a majority of all the

votes cast for and against it at such election: and public notice shall be given of the time of applying for such laws, in one of the newspapers printed and published in this state, thirty days before the preceding annual election for members of the legislature";

Which was read, laid on the table, and ordered to be printed.

Mr. Stratton offered the following, [G]as an addition to Mr. Field's substitute:

[J]"No law shall be passed to create counties or alter county lines, unless the territory proposed to be set off into a new county, and the territory left in the county or counties affected thereby, shall severally be entitled, by the population embraced in each, to two representatives in the General Assembly";

Which was read, and ordered to lie on the table and be printed.

Mr. Browning offered the following:

"The powers of the government shall be divided into three distinct departments, the legislative, executive and judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided";

Which was read, and referred to the Committee on subjects not referred to other committees.

On motion of Mr. Allen, it was

Ordered, That when this convention adjourns, it will adjourn to meet on Monday afternoon, at three o'clock.

The convention then adjourned to Monday afternoon, at three o'clock.

[J]MONDAY AFTERNOON, 10th June.

At three o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Kidder.

On motion of Mr. Ewing,

The convention resolved itself into committee of the whole, Mr. Cassedy in the chair, upon the consideration of the unfinished business of Saturday, being the report of the Committee on the Legislative Department.

[G]Mr. Vroom moved to amend [the 14th Section] so as to limit the offices, to which members of the legislature may not be appointed, to those which are filled by the Governor and Senate, or by the Legislature. Agreed to.

[A]Mr. Allen moved to strike out that part of the 15th section which excludes Justices of the Peace from being elected to the Legislature.

He said they were the best men of our Counties, and had heretofore been eligible and he thought they should continue to be.

[G]Favored by Mr. Condit, and opposed by . . . Williamson.

[A]Mr. Green thought they should be excluded—Suppose there are two from each County, and some question comes up as to their fees or extending their jurisdiction? Should they not be excluded as well as the Judges of the Supreme Court or Common Pleas, who, you suppose, may legislate to promote their interest? As to their being our best men, he hoped and thought there were more than 4 or 5 men in each County, fit to be elected to the Legislature.

Mr. Allen thought that argument might as well be applied to lawyers—as questions frequently come up concerning their fees.

Mr. Wurts said the invaluable services of the Justices need not be lost, for they can be elected, only they lose their commissions as Justices—not agreed to.

Mr. Gilchrist moved to strike out the words "or persons, holding office under the U. States," and to insert at the end of the section "and no person holding any office of profit under the government of the U. States shall be entitled to a seat in either House." Agreed to.

[G]Mr. Parker moved a substitute for the whole section, to change the phraseology. Not agreed to.

[A]Mr. Dickerson moved to strike out the 16th sec., which declares that money bills shall originate in the Assembly.

Mr. Jaques said that clause originated in Great Britain where the king and his ministers could levy taxes and imposts, and the people, who were oppressed procured this power to be given to the Commons for their protection. It has been a source of great difficulty in Congress, and he hoped we should not adopt it.

Mr. Dickerson said there was good reason why this power should be given to the Commons in Great Britain, but there was no necessity for it in Congress or in this State. The famous compromise Bill, originated in the Senate and was sent to the House, and it was held that it must originate there, and they passed a bill in the same words, and sent it back to the Senate. The subject has caused great debate and difficulty, and he hoped we should not follow Great Britain or even Congress in

things which were useless.

[G]Opposed by Messrs. Vroom and Browning, and disagreed to.

[A]The 18th section being read that "the credit of the State shall not be loaned."

Mr. Parker said in case of war, it might be necessary to loan the credit of the State to the U. States, and a case may arise, which shall threaten the dissolution of the Union, as of rebellion, and the United States could not then borrow money at all and the States should then be able and willing to loan their credit to her, if necessary.

Mr. Vroom explained that the difficulty was remedied in the next section.

Mr. Ryerson said the next section did not meet his views entirely. In case of war we cannot lend our bonds to the U. States to raise money upon, but we must raise the money ourselves. He moved to add "except for purposes of war, or to repel invasion or suppress insurrection."

Mr. Condit preferred the section as it is.

Mr. Browning said the difference between loaning money and credit, was the same as that between taking money out of your pocket, lend to your friend and endorsing his note. The one cannot always while the other is very easy and often leads to great difficulty. hoped the amendment would not prevail.—Not agreed to.

The 19th section being read . . .

Mr. Vroom said it was perhaps a novel provision, but he hoped it or some substitute would be adopted. The committee thought $100,000 should be the *maximum* of the debt of the State, except in case of war, when it is necessary to act with promptness, and liberality. He thought too, that a law for a specific purpose, should be first submitted to the people, and then the payment of the principal and interest provided for by those who created it, and not be entailed on posterity. He alluded to the right of the State to purchase certain of her public works, if she saw fit, which should not be prevented by a constitutional provision.

After much debate Mr. Wills offered an amendment that the section should not apply to any monies that are or may be deposited with this State by the General Government—agreed to.

Mr. Gilchrist moved to strike out 20 and insert 30. He said if it should become necessary to borrow money to pay for the large public works, which the state might purchase, it could be borrowed on better terms for 30 than 20 years.

[G]Mr. Ryerson advocated the amendment with reference to the purchase of the works of the United Canal and Railroad Companies.

[A]Mr. Vroom opposed it, on the ground that those who contract the debt, should pay it, and not entail it on posterity.

Mr. Allen said the principle was not correct that the generation which contracts the debt should pay it, if it is done for the benefit of posterity. It would be right if the money is lost or dissipated, but it is not right that we should pay by enormous taxes, $5,000,000 to create a great work to transmit to posterity, and which will be worth $10,000,000 to them.

Mr. Stratton said however valuable these public works may become in the hands of individuals or corporations, he had no idea they could be so under the management of the State. The example of the other States might be a warning to us, and teach us to guard against the peculation of individuals and the embarrassments into which those States have become involved. If when the time arrives when it will be in the power of the State to purchase these works, the works themselves will command more in the market than the appraised value, I would have the State take advantage of that circumstance as a matter for speculation and not with a view to a permanent tenure of them.

Mr. Ewing did not suppose the State would retain them, but sell them to capitalists, or to the U. States, to whom they would be very valuable in case of war.

Mr. Jaques hoped the State would never enter into speculation, and referred to Penn. and N. York. He hoped the time (20 years) would be reduced rather than enlarged.

Amendment not agreed to.

Mr. Naar moved to strike out that part of the 20th section which requires a vote of two thirds for a law "granting prerogative rights or exclusive privileges." He said these were contrary to all ideas of a republican government. They are and have been the bane of aristocratic governments, and he would not recognize it as in the power of our Legislature by any vote to grant them. He thought they were denied by our bill of rights, and that of the Constitution of the U. States. He was not aiming at corporations because the creation or continuance of them is provided for in the next sentence. [G]At least he did not now oppose them. But it might be inferred from the phrase "prerogative rights and special privileges," that the legislature might confer prerogatives or privileges of a novel or anti-republican character.

[A]Mr. Zabriskie thought the gentleman's argument was not consistent with itself. He admits that the present charters should be retained and renewed if necessary.

Mr. Naar. But that is provided for: and these words are super-

fluous.

Mr. Zabriskie. But they are "prerogative rights and exclusive privileges."

Mr. Naar. I object that these words are superfluous. The very names are odious in a republican government. In other countries the right to the crown, and to carry a baton, are prerogative rights, and he hoped the words would be stricken out.

Mr. Vroom said, in speaking of prerogative rights, we do not speak of crowns or batons. They are prerogative rights in England but not here. We have prerogative rights, but they do not belong to the king, but to the people. The right to take private property for public use, is a very high prerogative right.

Mr. Naar. We provide for that elsewhere.

Mr. Vroom. But there are others not provided for. If a right to build a railway across the State, was given to a man & his heirs, they would not be a corporation. But it would be a special privilege and is not provided for except in the words proposed to be stricken out.

Mr. Allen inquired if the right to sell rum and to practice law or physic, would require a two thirds vote? They are certainly special privileges.

Mr. Hornblower. Those laws are not a grant of rights, for every man naturally enjoys them.

They are a restraint of natural rights.

Mr. Ryerson. Mr. Naar's idea is a strange one. He is opposed to these rights, and wishes to strike them out of the article. The consequence would be that a mere majority instead of two-thirds could grant them.

Mr. Naar. No, Sir. If the Constitution does not recognize them at all, the Legislature will have no right to grant them.

Mr. Vroom. If you will introduce that feature in the bill of rights, it might answer.

Mr. Naar. I should have so moved, if it would not affect present charters and corporations.

Motion to strike out not agreed to.

Mr. Wurts called attention to the close of the article which allowed a majority to alter or repeal these rights and the charters of private corporations (except religious, literary and charitable ones), although it required two thirds to grant them. He thought it should require the same vote (two-thirds) to repeal and alter, as to grant them. I move an amendment accordingly.

Mr. Condit had rather strike out the latter clause entirely: (as to

repealing &c).

He thought it was unnecessary in the Constitution, and that it should be left to the Legislature, to insert the clause when it was necessary. That has been customary heretofore and will doubtless continue so to be. But if you put it in the Constitution, you tie up the hands of the Legislature and prevent charters from being accepted where the public benefit would be greatly promoted.

[G]Mr. Parker adverted to the special priyilege of the Trenton Delaware Bridge, and said he thought it wrong that the legislature should have authority to repeal laws granting such privileges.

Mr. Vroom said the clause would not apply to any privileges now granted, but to future grants.

Mr. Parker knew this, but hereafter it might be necessary to grant special privileges in order to secure some public good. He wished that nothing should be put in the constitution which should preclude the legislature from doing this.

Mr. Condit concurred. The clause was unnecessary in the constitution and it might be left to the legislature to insert such clauses in the charters as heretofore.

[A]Mr. Browning concurred with the gentleman from Essex, that the clause was unnecessary. He knew it was now the prevailing sentiment—*the spirit of the age*—of which we have heard, which looks suspiciously at corporations. But I submit, says Mr. B. whether it is just or generous to posterity, thus to fetter and embarrass their legislation. First to require two-thirds to create a corporation or grant a special privilege and still leave it to one of the parties to take away all benefits conferred and privileges granted at pleasure. The requiring of two-thirds is a sufficient security against hasty or party legislation and is it consistent with a proper regard for those who are to come after us, to suppose they will be less wise and discreet than we are? Let us take a review of the Legislation in this and other states and inquire what would be the condition of things had they been embarrassed by constitutional provisions of the kind proposed? What would be the state of things here? Would our own *public works* have any existence? Would we not now be plodding between the cities of Phila. and N. York in Troy built coaches? If two-thirds had been necessary to authorize their construction, it is most probable they would yet be unauthorized. Or who would have embarked in the enterprise with a power, in a *bare majority* of the Legislature, to confiscate their privileges and scatter their property at pleasure? I am no particular friend of incorporated Companies, much less of those referred to. But still,

I do not believe that all the wisdom and discretion is embodied in this Convention. This room, will yet, I trust, be filled with men as wise, discreet and patriotic as we are.

I submit further, Mr. Chairman, whether it is *republican*—and, (although I have no particular liking for the word) whether it is *democratic*, thus to tie up the hands of future legislatures? Whether the will of the majority when clearly and deliberately expressed ought not to govern in this matter?—Let us not in attempting to embody the *spirit of the present age*, prevent subsequent Legislatures, from embodying the spirit of future ages. Besides, Mr. Chairman, will not the effect of this clause, be to drive capital and enterprise from the State? Will capitalists first hazard their money in doubtful or dangerous undertakings, with the further danger of repeal always hanging over their undertakings?

The two-thirds vote will secure the State against all hasty or imaginary schemes and I am opposed to clogging enterprise by any such constitutional hazard. Leave it to future Legislatures to insert or not, this provision in charters. They will keep pace with the *spirit of the age*.

Mr. Hornblower wished the door left open so that the Legislature might or might not reserve the right to repeal the condition upon which the charter was accepted. He alluded to the fact of bridges being built over the Passaic and Hackensack rivers, and a turnpike over the salt meadows in 1794 which was thought before impracticable, and would never have been done, or at least for 20 years, if the Legislature had not granted them a provision that no other bridges should be built within 10 miles—and there are many such cases.

Mr. Halsted should vote for the amendment, because he wanted the section as perfect as possible but should reserve the right to vote for it or not afterwards, as it might, or not, in other respects, meet his views. He was clearly of opinion, that the same vote should be required to repeal or alter a charter which passed it. But there is another view of the matter. It would be incongruous for the Legislature to pass a charter with some clause, *inducing* the two-thirds vote and then to allow a mere majority of the next Legislature to alter it, and strike out that *inducing* clause. It would be in effect to grant the charter by a majority vote.

He thought the sentence had better be stricken out for it might greatly embarrass investments of capital in our State.

Mr. Wurts' amendment was agreed to.

Mr. Condit offered the amendment suggested by him before, to strike out the clause which reserves the right to repeal, &c.

Mr. Brown hoped the motion would prevail. He was willing to require a vote of two thirds to grant a charter, not because he thought there was any more *wisdom* in such a vote, but to prevent *party* legislation in such matters although he did not know but the time for such legislation had passed by, and that public sentiment had corrected the evil. He held that a charter should never be repealed, except for being abused. It is more proper to leave that to the Judiciary. It is the passing of judgment on a creature: and he would remind gentlemen how much farther they were going to protect the State from the danger of charters, than to protect the very Constitution itself? He would never be satisfied if a mere majority could submit future amendments to the people, and yet that a mere majority cannot incorporate a bank. He should go for two-thirds in both instances.

Mr. Vroom did not intend to enter into an elaborate defence or discussion of this provision. His situation was such as to prevent him from doing it, and he should not have been here now, if this report had not been under consideration. Something is necessary to guard and control these charters. And if this provision is stricken out, an effort will be made, and sustained, to introduce a provision for *personal liability*, in them.

Mr. Jaques said he should make the effort whether this succeeded or not.

Mr. Vroom—Very well. If however, this provision remains, he did not know but it would do away with the necessity for that. Now I will ask gentlemen honestly and sincerely, if they believe this two-thirds vote and the power to repeal these charters would ever work injury to the stockholders. The argument is, "You can't trust the Legislature." I respond, why can't you trust the Legislature to repeal them when necessary? It must be a gross and flagrant abuse and infringement of right, which would tempt the Legislature to do it, but there may be cases, where it would be of the greatest importance to possess that power.

But he was not able to discuss the subject farther.

Mr. Ryerson moved the committee rise, to enable the gentleman to advocate his proposition when he should be able to do so.

Agreed to.

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

On motion of Mr. Ryerson,

The convention adjourned till to-morrow morning, at nine o'clock.

[J]Tuesday morning, 11th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by Rev. Mr. Wack.

On motion of Mr. Randolph,

The convention resolved itself into committee of the whole, Mr. Cassedy in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on the Legislative Department.

[A]Section 20. Mr. Condit's amendment to strike out [G]the words "and all such laws may be altered, &c." [A]was in order.

Mr. Williamson said it was not a novel provision, and was useful. He found it in the Constitution of Pennsylvania. He had no apprehension the Legislature would do wrong deliberately. It appeared as if they were afraid to trust the Legislature. He instanced the case of the Lumber Bank, the property of which would have been lost, but for this provision contained in their charter. The Legislature would guard the public interest, and they would never repeal any charter without good cause. He was decidedly in favor of retaining the clause.

Mr. Parker said the provision in the Constitution of Pa. applied only to Banking companies. This, however correct or proper, does not apply to the cases in this section. His objection was, it gives authority to the Legislature to alter, repeal or modify an act granting special privileges! It is giving them the power to violate a contract, for such it must be considered. If a charter granting any special privileges was given, this provision would not be necessary in the charter, and what would be the effect of this constitutional provision? The charter itself would appear good for the time for which it was granted, and no person would think of looking beyond that, but yet there would be a power in the Legislature to repeal that whenever they saw proper, and this would destroy all confidence.

Mr. Zabriskie moved to strike out the word *such* in the 5th line, and insert after the word *laws* "creating corporate bodies with banking or discounting privileges"—but he consented to let it lie until the next section came up.

Mr. Condit again advocated his amendment. Common sense forbids the insertion of this provision, unless it is intended to throw a damper on all enterprise throughout the State. When any great object of improvement is to be accomplished it must be done by gentlemen or companies having the capital, they must have a liberal charter. If the Legislature may nullify a contract it must have the effect of putting down all enterprize or retard its increase. I do not see the necessity of it at all. Where such a reservation is necessary, it should be put in the charter, and if the Legislature cannot be entrusted to do that, they are incompetent for the discharge of their duties. I am willing to limit the times of charters to a less period. I am willing it should require a two third vote to grant them. In our earliest legislation the times were fixed at less periods, but legislation is so unstable, that what may be deemed good sense in one year, in the next Legislature would be disregarded. I cannot look at this, sir, with any degree of complacency. You give the Legislature power to make a contract, which the next Legislature may repeal. Mr. Condit concluded by instancing cases where the Legislature had acted thus, committing manifest wrong.

Mr. Vroom. I feel it my duty, Mr. Chairman, to say a few words in defence of this provision, against the imputations thrown out against it. Certainly if there is neither good sense or propriety in it, it should not be entertained at all. The great difficulty seems to be that gentlemen say it will be a violation of a contract. But is this so? If this is made a fundamental law of the State, will not all contracts be made in deference to the law? Will not all contracts be based on it? If there existed a constitutional provision of this kind, and I as one of the applicants should agree to take a charter for twenty years, can it be supposed that the Legislature would grant the charter or the corporators accept it without this provision? If this law were placed so high out of the reach of all that it could not be read, then it might be termed a fraud. But to say that this provision would operate as a fraud is an argument, the force of which I cannot comprehend. But it is said, put this provision in the charters, and then the people will understand it, but they will not unless it is put in. Sir, I cannot understand this at all. This very argument satisfies me of the propriety of having this provision here—The object of making this a constitutional provision is to have this uniform so that there shall be no difference between them, on account of the characters of the Legislature which may pass them. So as to Banking institutions. Some of them by their charters have the directors personally responsible, and others without that provision. It is true we have been told by these corporations that this provision was of no use, and could be easily evaded. There are few provisions which these corporations cannot evade, but at all events they are afraid of it.

But this is no new provision. In the Constitution of Delaware there is a provision exactly similar to the one now proposed to be stricken out, and I have never heard of any difficulty arising in consequence

of it.

(Mr. Vroom here read the provision referred to)

The great object is to guard the public against the monied corporations and so far as these institutions are concerned, I see no difference of opinion as to this provision. In reference to other corporations, it is a wholesome provision, and if it is operative on all alike, it cannot but be safe. It is no argument to say that it will render a corporation unsafe, because any Legislature may take away the charter. Why, sir, there is no such authority. The Legislature cannot repeal any charter, except it be required by the public good. Sir, it will be a very difficult matter to find a Legislature, or two-thirds of a Legislature, to meddle with any corporation but upon pressing emergency, and in such an emergency is it not safe to have the right and power to protect the people? These emergencies do occur, as gentlemen very well know, and yet you would have no remedy to apply. The idea of going to the Judiciary for a remedy, which the public good requires, should be immediately applied, is futile. The provision here reported is the proper remedy, and I hope to see it engrafted on the section as it is.

The motion to strike out was then agreed to—ayes 24, noes 19.

Mr. Browning moved to strike out the word *use* in the 2d line, and insert *purposes*, which was agreed to.

Mr. Allen. This section I apprehend would create many disadvantages, and amount to an absolute prohibition against the renewal of any private corporations or the creating of any new ones. There always is opposition to all acts of incorporation, and where a vote of two thirds is required to pass such an act, the probability of being able to secure that majority, will act as a prohibition to any future act. Is the Convention prepared for this? I think not. There are many persons who view all acts of incorporation with great jealously. This must be left to public opinion, and the evils will be corrected. Gentlemen will well remember that in Penn., a few years ago, when Mr. Snyder was Governor, the Legislature incorporated 40 Banks in one bill. The public sentiment then was in favor of Banks. Well, Governor Snyder very properly vetoed the bill, but it was taken up and passed by the constitutional majority notwithstanding his objections. What was the real occasion of this? It was not surely that public sentiment was in favor of so many Banks, but there was a combination of interests, and these Banks were incorporated under it. If we engraft this provision on the section, applications will be made for acts of incorporation, which may not be granted. In time public sentiment will undergo a change, and a combination of interests will be formed as to objects and localities,

from the East and the West, the North and the South, and this interest will increase from year to year, until finally the requisite vote of two-thirds will be obtained, and many projects which would not on their own merit obtain any favor will by means of this combined interest, this log rolling, all will be got through, good and bad.

So far as the prohibition goes, it will amount to a rope of sand, as this combination of interests will so operate as to destroy the principle. Mr. Allen concluded by moving to strike out all of the section after the word use in the 2d line [previously changed to "purposes"].

Mr. Marsh. Will not the object be attained by adopting this amendment, and then inserting a clause which I find in the Constitution of Delaware, which is, that a two-third vote is required to create a new charter, but not to renew an existing one. Gentlemen will remember that the creation of a new corporation, and the renewal of a charter are very different. For instance, a bank has long been established in a county, the business of the county is in a manner interwoven with the interests of that bank, and if that charter should not be renewed, manifest injury might be done to the county. In the case of renewing such a charter, I see no propriety in requiring a two-third vote. Mr. Marsh moved the adoption of the clause he had read and referred to.

Mr. Ryerson. What a strange substitute that would be! What would be the effect of it? It would give the entire monopoly to the banks now in existence. The old banks would combine and unite to prevent the formation of any new ones. In voting, as I shall, upon this question, I go decidedly against my own interests, as I am a stockholder myself, but I think it is wrong, and must go against it. It would be granting a monopoly to which the people would never consent. Let this idea go abroad, and what would be the effect?

The gentleman says the banks are in a measure interwoven with the counties. I do not know how it may be in Morris county, but in the county where I reside, we can get along without one; and if it cannot get a two-third vote to renew the charter, I am quite willing it should go down. If it is a good institution, it will always command the necessary vote.

Mr. Allen said he was willing to accept of any prohibition against the Banking corporations, and he repeated what he had before urged of the effects of a combination of interests.

Mr. Mickle thought the section was correct as it was reported, and he thought it perfectly proper that applications for acts of incorporation should require a two thirds vote.

Mr. Halsted. I am in favor of striking out as proposed by the

gentleman from Burlington, and leaving it to the Legislature; we ought not to distrust the Legislature too much. It appears to me that the ground of the argument on which this is made to rest, has been fully met. The argument on the other side was directed exclusively to certain corporations, viz: monied corporations. But if I understand the argument of the gentleman from Burlington, it was this—that the language of this section is too broad—it covers more ground than is necessary to meet the evil complained of in the argument on the other side. If it be the sense of the Convention that monied corporations shall not be created without a two-third vote the next section will be the proper place to test that. But in order to provide a remedy against a partial evil, we are asked to make a general law against granting any privileges or creating any corporation whatever.—The remedy is too broad—are we not going too far to say to future Legislatures, you are not to create any corporations without a two third vote? Has any great alarm been created in the public mind except perhaps from the operation of monied institutions? Does not the distrust of the people grow out of the acts of monied incorporations? Why should we now be operated on by the sentiments that there are too many banks, when the laws of the U. S. are such as to invite capitalists from abroad to seek an investment for their capital in New Jersey to extend this provision to corporations for manufacturing purposes—why should we tie down the Legislature from acting with the same liberality as heretofore? I agree with the gentleman from Camden that the Legislature is to be trusted. I shall vote to strike out as proposed, and indeed I should be willing to vote for striking out the whole section.

Mr. Hornblower opposed the whole section.

Mr. Ogden, Were I to be governed by my own interests, they would probably have a strong influence on my mind. But I have no such motives.—The Institution over which I preside stands on a charter renewed from last February for 20 years, without any limitations beyond those granted in the original charter, and certainly if we desired to secure a monopoly, I should vote for the two third principle. The Rail Road Company with which I am connected is in a position which will probably require no legislative aid for the future. The Legislature has been very liberal in extending aid, and they will now doubtless go on and accomplish the objects for which they were incorporated and although it might be the interest of this Corporation to prevent the creation of any new Rail Road still without reference to that, I should vote the same. But from the commencement of this Convention I have ever opposed the two-third rule, and am glad that I have the opportunity to continue my opposition against the section now under consideration.—I am willing even to have the whole section struck out. I do not remember any case in New Jersey, where the public money has been improperly appropriated to private use. I am not afraid to trust the Legislature, as I know from experience that its ruling principle is to be very particular in passing acts of incorporation. In the case of the Institution to which I am attached the charter was about expiring, and I came here to have it renewed, and although there was not a single objection to it, though it afforded perfect satisfaction to the people, yet it took me the whole session to get it renewed by a bare majority, and then I had to get the aid of a gentleman who wanted a similar favor in another County. We have already a section, which prevents the passage of omnibus Bills. To carry out the intention of this provision let each Law stand on its own basis. Let the Legislature determine as to every particular corporation, and although we may prevent the passage of omnibus bills, yet we cannot prevent such a combination of interests as will carry everything before it, and the consequence must be that every one must pass or none. The greater security is in the majority vote.

P. B. Kennedy. The great danger to be apprehended is said to arise from monied institutions. I do not think that is the only danger. Incorporated Companies who have some particular object in view, some point to gain may combine with one or the other of the political parties, knowing that the Legislature is nearly equally balanced, and by placing a few men in the Legislature may obtain what they desire. This should be prevented, and the two third rule alone can have that effect.

Mr. Marsh again disclaimed any idea of encouraging monopolies.

Mr. Zabriskie advocated the two third principle as tending to prevent hasty and imprudent Legislation. It was a great conservative feature for which he would always contend.

Mr, Condit. The section as it now is, seems to me very proper, and though I have no anxiety to extend it further than monied corporations, still I think it a wholesome rule to require a two third vote in all. Gentlemen talk of difficulty of obtaining a two third vote and come to this conclusion from a single instance. But that is not a proper criterion. There may have been many reasons to operate against the renewal of the charter which the gentleman (Mr. Ogden) has stated. Even if it was a strong case it does not prove any thing. We should not confine our views on this subject to the present time. Public sentiments has been against Banks—They are however getting into favor again. I think the people are unnecessarily distrustful of them—But we should

think what will be the case 10, or 15 or 20 years hence—if business is prosperous and the Banks do a good business, the Legislature will be pressed from all quarters for Banks and they will not be able to refuse. It will be as easy to get a charter then for any particular purpose as it is difficult now. We are to settle upon a general rule and not for a particular time. The rule is good as a part of the fundamental law. As for the reason urged, that if you adopt the two-third rule, the various interests will combine, that is already answered. They will combine in any case, but it will be more difficult to combine with success under the operation of that principle.

Mr. Ryerson contended that manufacturing and other monied corporations were equally productive of mischief and injury, and instanced several which had failed in the County where he resided, by which the citizens had lost many thousands of dollars—He urged also that they exerted a powerful influence on the elections, and instanced the Morris Canal co. in 1839.

Mr. Williamson. If there is any evil to be deplored in the community, it is the facility with which acts of incorporation are obtained. It is a source of complaint on all hands. It is held by all to be a great evil. But it is not confined to Banks alone: They prevent individuals from carrying on business with their own capital which otherwise but for them, they might carry on. An incorporated company has the advantage over individuals and in manufactures, an individual cannot carry on the business with any facility. This is the case not only in New Jersey but throughout the U. S. and in very many of the States checks have been provided against this facility of obtaining acts of incorporation. This is an evil which requires the interposition of the Legislature, and if this section is struck out, I shall still record my opposition to the facility with which charters continue to be granted. I like the section as it is, but if there are any acts of incorporation which ought to be exempted from this provision, it is for public improvements. Canals and rail-roads are required & they can only be made by corporations, and if any are to be exempted from the operation of this rule, it should be these.

Mr. Halsted. I am happy to see that one point at least is conceded—that this clause is too general. The gentleman from Sussex tells us his experience teaches us that other corporations than Banks should be included in the category, and come within this provision. Great evils have no doubt accrued from the existence of other Corporations, but I am not clear that these evils have grown out of the original creation of these corporations. I am not willing to believe that any considerable

part of these corporations have been applied for from improper motives. That many have failed is true. But what was the cause of their failure? May it not have been attributable to the fluctuating policy of the General Government in reference to its domestic industry? This, Sir, I think is the true cause of the failure of these manufacturing companies. On this point however I hope the policy of government is now settled on a firm basis, and in a few years applications for manufacturing corporations will commend themselves to the Legislature.

The motion of Mr. Allen to strike out all after the word "purposes" in the 2d line, was *not agreed to*, ayes 14, noes 29. Mr. Marsh then withdrew his amendment.

Mr. Zabriskie then offered as a substitute for the whole section, a section containing the same provisions as the original section, except as to *prerogative rights*, and excepting from the two third rule corporations for literary, religious or charitable purposes, and for works of public improvement.

Mr. Stokes moved to strike out "or charitable," contending that members were very apt to suffer their sympathies to be worked on, and to vote away the public money for charitable purposes, when, had the people been consulted, no donation would have been made. *Agreed to*, ayes 25, noes not counted.

Mr. Pickel moved to strike out the words "works of public improvement." Not agreed to, ayes 17, noes 22.

The substitute offered by Mr. Zabriskie was then agreed to.

Section 21. Mr. Zabriskie moved to insert at the end of section a provision, that all such charters may be altered, repealed, &c, when required by the public good, and that no charter should go into effect, and should be inoperative without this provision, which was agreed to.

Mr. Ryerson. Mr. Chairman, what is here meant by money corporations?

Mr. Vroom. Banks, insurance companies, and trust companies I suppose. Manufacturing companies do not come within the meaning of the term.

Mr. Condit moved to strike out 20 years and insert 15 years. Not agreed to, ayes 18, noes 27.

Mr. Parker moved to insert "*not exceeding*" (20 years) which was agreed to.

Mr. Spencer moved to amend by adding to the section a provision that no charter should be created or renewed without six months' previous public notice of such application made in the manner prescribed by the law. *Not agreed to.*

Mr. Jaques moved to insert the words "and manufacturing companies," in the first line after the word corporations, which was not agreed to.

He then moved to add "and in all cases, the President, Directors and Stockholders shall be personally liable for the debts of such corporation." Mr. Jaques advocated this briefly, as he said so much had already been said about Banks, little more was necessary to convince the members of the evils entailed by them.

Mr. Naar said—I rise to second the motion of my friend from Middlesex. In addition to the reasons assigned by him for the adoption of the proposed amendment. I wish to state that the amendment will lead to the security not only of the community at large, but to that of persons immediately interested in banks; hundreds of innocent stockholders, amongst whom are many widows and orphans, would be saved from risk of loss by a provision which would tend to produce a salutary check upon the management of presidents and directors of banks. This is obvious from the knowledge we have of the strong influence which self-interest and self-preservation bring in operation upon the ordinary business transactions of individuals. But, Sir, let us look upon the operation of this system where it has been tried. The banks of Rhode Island, if I have been well informed, and I believe of one of the Western States, have this feature in their charters; and what has been the consequence? Whilst the banks over the Union were failing in every direction, these banks remained solvent and useful. Look at the joint-stock banks of Scotland; this feature of individual responsibility has saved it amidst the ruin of the banking institutions of England, France and other European nations. They have stood amid the various vicissitudes of other institutions immovable as rocks. With this brief expression of my views I shall with much pleasure vote for the amendment of the gentleman from Middlesex.

Mr. Child. The gentleman put this issue before the Committee—Will we have banks in New Jersey, or will we not? Are they useful, or are they not? What prudent man, if this provision is adopted, would hold a share of stock in any bank? The gentleman talks of drawing interest upon interest. Why, Sir, for 9 or 10 years there is no bank in the state which has paid the stockholders legal interest. If I own a single share in any bank, every dollar of my property is to be liable for the debts of that corporation. Who, I ask, would own stock in such an institution? Why, Sir, banking would be driven out of New Jersey, or the banks would be in the hands of irresponsible men.

Mr. Jaques. I accept the issue, Sir, which the gentleman has forced upon me, and say that banks are not useful, but on the contrary injurious, and wherever they are established, have been productive of great evil to all classes, not even excepting those engaged in it. But we have no right to establish institutions of this kind as a state. When we accepted the Constitution of the United States, we agreed not to issue bills of credit, or to represent money; and how can you incorporate individuals to do that which you cannot constitutionally do yourselves as a state? How can members of the Legislature, with the oath they have taken before them, vote for the creation of a bank to issue paper money?

Mr. Field. The gentleman is honest in offering his amendment, and he is consistent, for he opposes all banks. But he ought to have put *Banks* and *Divorces* in the same category, and say the Legislature shall not have power to create banking corporations, or to grant divorces.

Mr. Jaques said he was quite willing to go for both.

Mr. Pickel briefly advocated the amendment.

Mr. Brown moved that the Committee rise, which was not agreed to.

Mr. Naar. Sir, the observation which has fallen from the gentleman from Mercer, renders it necessary as the seconder of this amendment, that I should disclaim the intention applied to him.

In the abstract, I agree with the gentleman from Middlesex, who moved this amendment, as to the injury received from banks, but I am aware that these institutions are so engrafted upon, and connected with, our commercial system, that perhaps greater, much greater will arise from their extinction than their continuance. My object is, therefore, to benefit the institutions themselves and the persons interested in them; and I am of opinion that a feature of this kind would procure for them a character of solidity, which would secure for them the confidence of the public, and thereby render their stockholders more safe, and hence you give a greater value to their stock.

Mr. Vroom. I do not know that I am prepared to go for this proposition now. It will depend in a great measure on the guards which by the future action of the Convention will be placed on these institutions. If there is any danger to be feared in a republican Government, it is the danger of associated wealth, with special privileges, and without personal liability. It is the aristocracy of wealth we have to fear; and that is the only aristocracy from which danger is to be apprehended. The only way, Sir, to curb this, is to introduce the principle of personal liability and responsibility. And I do not know whether it would not

be better to go even further than that. I do not see why the provision should not extend to manufacturing establishments, and that it would be better there than in banking corporations.—There we have one or three persons with $20,000 or $30,000 each at their command, and they are willing to risk it in business. But here comes some overgrown capitalists from the East, and they get an act of incorporation. They enjoy privileges which men of moderate means cannot obtain. And why should they enjoy these without being personally responsible? But the question now is applicable only to banking corporations. The same argument is applied to a bank with this restriction—a wealthy man loses perhaps some four hundred or five hundred dollars. What is that to him?—Nothing; but what would it be divided among the poorer class?

If a provision of this kind were adopted, the capital of banks would be in fewer hands, and they would assimilate nearer to Joint-Stock Companies, and would they not be more safe for the community? They would be the directors and managers, to loan the money out for the benefit of the community, contenting themselves with the lawful interest, not seeking to speculate—to put the money in their own pockets, or those of their friends.

But gentlemen say you will drive the banking capital from the state. Sir, we have heard this same thing before. I remember when in 1823 the Legislature reduced the legal interest the same clamor was raised—ruin was predicted, but it did not come to pass. And I remember too when the idea was started of making directors personally responsible, the same thing was said. It was urged that no honest man—no man of means or character would become a director of banks. But it is not so—I see now some of our best and worthiest men are directors under this very provision.

Before any further action was taken on Mr. Jaques' amendment, the committee rose, reported progress, and had leave to sit again.

On motion of Mr. Mickle,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

On motion of Mr. Wills,

The convention resolved itself into committee of the whole, Mr. Cassedy in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on the Legislative

Department.

[A]Mr. Jaques' amendment, to create a personal liability in the President, Directors & Stockholders of monied corporations, was again resumed.

Mr. Ewing should be in favor of the amendment, if he did not think it was out of place in the Constitution. It is a proper matter of legislation—and it is our greatest fault in this body—that we are legislating instead of making a Constitution. We mistrust future Legislatures. I do not. They are as competent to create proper restrictions in these matters, as we. It is very well for Congress to make such restrictions upon the Banks in the District of Columbia. That is legislation. But we are not legislating: and I fear we shall lay too heavy a burden upon the Constitution, so that it will not be acceptable to the people. I am therefore opposed to this clause in the Constitution.

Mr. Hornblower. When I moved this morning that the Committee rise, I had intended to answer some remarks of the gentleman from Somerset (Mr. Vroom) who is not now in his place—and as they will go forth to the world, I am unwilling that they shall go out, without an attempt, at least, to answer them. The question before the Committee was, whether we should adopt a proposition in our fundamental law, that no charter shall be granted to a Manufacturing, Banking, or Insurance Co. without the personal liability of these officers.

Mr. Jaques. I will set the gentleman right. The amendment only refers to Banking companies.—Manufacturing companies have been stricken out and Insurance companies are not at all mentioned.

Mr. Hornblower. I may have been mistaken in that. The remarks of the gentleman from Somerset respected monied corporations—and he took the opportunity, not only to sustain the amendment and the mover, but to prejudice the public mind against institutions of this character. We were told, sir that we had nothing to fear, but the aristocracy of wealth—and that the tendency of these institutions is, to congregate wealth, and their influence, to endanger the free institutions of our country. Now sir, if his plan is carried out, we may indeed fear,—the aristocracy of wealth. That is the ghost which alarms him—and his project to get rid of the danger, is, to create this personal liability, and he says if we adopt it, some half dozen or more capitalists, will own these institutions, and will take care that their concerns are well managed. That, sir, would be the aristocracy of wealth, with a vengeance. I hope sir, that neither, I, nor my posterity will ever see the time, when eight or ten or twenty rich men, can obtain a charter,

and exclude the mechanic and laborer from their share and influence in its concerns.

Suppose you have a bank upon that plan. Its capital is $500,000. Those interested in it, are men of large property. They were personally liable, and are willing to be, because they have the sole and entire control of it. Then sir, you have an Institution that will make the rich richer, and the poor poorer. If I am a rich man and want to borrow $10,000 for speculation, or to buy out the property of my poor but unfortunate neighbor, they will lend it to me, while to a poor man they would not lend $500 to save his goods from being sold out by the Sheriff.

I do not mean to justify all banks as they have been conducted. I have suffered by them as well as others—but I speak of banks as they ought to be, and I say they are purely republican institutions. They are institutions in which the laborer and mechanic have their influence—in which the monies of the widow and orphan may be deposited for safe keeping. They are under the control of the popular will. We do not want them to be entirely under the control of rich men, who manage them just as though they were co-partners. But when they are as I contend they should be, they will be institutions from which young and industrious mechanics may have $200 or $300 to commence or carry on his business. This I want to see. These are republican, and not by any means, aristocratic institutions.—But what will be the operation of the plan proposed? I remember, some twenty five years since, a Jersey City bank was incorporated. The Chairman of the Committee well remembers it. Mr. Durand, was President. I was then a young man and invested some funds in it, and was soon elected a Director with two other worthy and wealthy citizens of Essex County, Messrs. Stout and Thibou. We took our seats at the board, and a few weeks after, my attention was called to the charter. I had never noticed it before, but found that the Directors were personally responsible to the amount of all they were worth, for all the debts of the corporation unless they enter their protest against contracting the debt *instanter*, while they were at the board. I told the other gentlemen from Essex, and we all immediately resigned. The consequence was that the Bank went into irresponsible hands. I sold my stock amounting to $500 for a lot of books hardly worth $100, and was glad to get rid of it at that.—

The Directors being irresponsible, the bank soon failed to the great loss and injury of the community. If we had remained at the board, it is possible we might have preserved the Bank, but we were driven from it by this very provision.

For these reasons I am opposed to the amendment. We must abandon our Banks altogether or let them be conducted, on such principles as experience shows to be necessary and useful. But if you clog them with these provisions, no young man will dare to invest his money in these institutions—none but rich men will do it, because they have the personal supervision and are willing to run all risks. I am not in favor of creating this "aristocracy of wealth." I am in favor of banks. I know the community has suffered loss from them—and so it has too, from the explosion of steamboats, and from other similar sources.

I hope the amendment will not prevail.

Mr. Allen was not willing that the vote should be taken upon some of the ideas which have been advanced against those connected with banks. I belong to no aristocracy. I have been not a professional, but a laboring man all my life. I must repel the idea too that we cannot give a disinterested vote upon this question. These banks are the weakest corporations we have, instead of the strongest. The very thing which is considered to be their strength is their weakness and causes their downfall. It was that which destroyed the Bank of the U. S. Public opinion would not sustain it. So of the two great companies in this State. It was said some time ago that they had too much power and the mere saying so, came very near destroying them.

So a few years ago the West Jersey Banks were compelled to suspend specie payments, while the East Jersey Banks did not. All admitted that the W. J. Banks were solvent and it was a mere question of expediency as to compelling them to resume—and yet public opinion caused the Legislature to pass a law compelling them to resume without regard to the action of the Phil. Banks which caused their suspension.

Mr. A. contended that although our State was agricultural, it had to depend for its prosperity very much upon its mechanics and manufactures—and he was sorry to see these restrictions in the Constitution against the Legislature granting them proper facilities. We have never had them under the old one, and had better live under that, than under one which by preventing these facilities, would be doing essential injury to the interests of the State. He was entirely opposed to the principle.

Mr. Child said the gentleman from Middlesex (Mr. Jaques) who proposed the amendment under consideration, has thought proper to make remarks and insinuations, which, if permitted to pass unnoticed, would authorize an opinion that this *wise and salutary provision*, as the gentleman has been pleased to term his amendment, had been opposed and would be defeated by Bank Presidents, Directors and Stockholders

from interested motives.

I know (said Mr. Child) that no motive of the kind has had the least influence upon [any] one, nor do I believe that any such motive has had the least weight with any of the gentlemen who have felt it to be their duty to oppose his amendment. The public good and that alone has I believe been kept steadily in view.

But Mr. Chairman, the stockholders of our banks as I shall presently shew, have little comparative interest in this question. Our farmers, but more particularly our Mechanics, Traders and Manufacturers are the persons most deeply interested. And, sir, it is for the sake of these large classes of our fellow citizens and for their sake only that I have been contending against an amendment which I know would have the effect to withdraw the capital at present employed in banking, whenever the bank charters expire. Would not such be the result?—What prudent man, I ask, would be willing to hold bank stock, if by so doing his entire property would be put in jeopardy or rather exposed to all the hazards incidental to banking? Would any member of this Committee be willing to receive as a gift a few shares of bank stock, and enter into an obligation to hold them for a number of years, under such circumstances? I do not believe one could be found. The real question then before the Convention is, are banks useful or can they be dispensed with without inconvenience. My opinion, sir, is, that banks limited in numbers and capital to the business wants of the community are useful, very useful; and that those now in existence in this State are so connected and interwoven with the business of the people that they could not be put down without throwing every department of business into confusion. But suppose the amendment should prevail and the banks should be closed. Who in that event, I ask, would experience the greatest inconvenience; who would be the greatest sufferers? Not the wealthy stockholders certainly, for they could reinvest their money in many ways which would afford them as great if not greater interest than they are now receiving, and it is not often they require bank loans. No sir not these, but our Mechanics, Traders and Manufacturers would be the sufferers. They would be deprived of the means they now enjoy of making temporary loans or of anticipating payments, and would thereby sustain a loss of almost incalculable magnitude. Yes, Sir, I repeat it, it is because this very large portion of our people must necessarily be seriously injured if the proposed amendment should be adopted, in consequence of the results it would lead to, that I oppose it.

The gentleman from Middlesex (Mr. Jaques) said he could see no reason why men who were enjoying these exclusive privileges, and

receiving 10 or 12 per cent annually for their money, should not be personally responsible for all the debts of the banks in which they were stockholders. When I replied by saying that so far from receiving the interest he had named, the holders of bank stock had not for many years received on an average legal interest for their investments; and that the effect of his amendment would be to destroy the present banking system; he answered, he knew or supposed it would have that effect, and it was for that very reason he had proposed it. Sir, I admire the gentleman's frankness and candor, but cannot concur with him in opinion that such a result would be a public benefit.

The gentleman from Essex (Mr. Naar) said, he was not opposed to banks. But he was in favor of the amendment, because its operation would be; to give additional security to stockholders, inasmuch, as they would be far more careful than they have been heretofore in choosing directors. Now Sir, however much the stockholders of our banks may be disposed to thank the gentleman for his kind intentions, few of them I think are so deficient of common sense as to approve of a mode of protection which puts at hazard every dollar they have in the world, to protect the little they may have in bank stocks. Besides, many holders of stock in banks live in distant parts of the State, or if in the neighborhood, are not competent to examine into their affairs. They are willing to risk the sum invested, and it is unreasonable to ask them to do more; nor will they do it. Make them personally liable, and they will get rid of their stock as fast as possible.—The gentleman from Hunterdon (Mr. Pickel) seemed to think that banks were created for the benefit of the stockholders and consequently that they would have no just cause of complaint if the amendment should prevail. This is not so: The object of the Legislature in granting these charters is to aid men engaged in the various branches of business; and after a charter is obtained, it is often found difficult to prevail upon men of capital to take the stock.

The gentleman from Somerset (Mr. Vroom) had not made up his mind; but was inclined to the belief that the amendment might have a salutary effect—that its tendency might be to concentrate the banking capital of the State in the hands of a few men of wealth. Banks would then be managed with more care and prudence and bank failures would be of rare occurrence. It is possible, sir, it might have this effect; it might build up an aristocracy of wealth, it might give to a few men the power to control to a great extent the business of the State.—Sir, if such might be its operation, I see an additional reason for opposing it. Give me as greatly preferable to all this, our present, truly demo-

cratical banking institutions where every citizen may be interested if he pleases, and to the extent he pleases. Mr. Chairman we have already provided against an unnecessary multiplication of banks—they are safe, have been with few exceptions very prudently managed; and are greatly needed. It certainly is not the dictate of good policy to put them down, and the amendment would I have no doubt have the effect to do it. For these reasons I shall vote against it.

Mr. Jaques' amendment was not agreed to.

The 22d Section being read, requiring the assent of two thirds of both houses to a law creating counties or altering county lines, &c.

Mr. Zabriskie offered a substitute, "unless the assent of both counties or townships thus to be affected be first obtained at a special election to be held for that purpose."

Mr. Field opposed it because, under it no new county could ever be created in New Jersey. He alluded to Warren, Mercer, and Camden which he said would never have been created, if not only the consent of the new county, but of that from which it was taken, was first required.

Mr. Zabriskie replied. He said the evils to be remedied are very great and he should have been willing to have voted for the two-thirds as reported, if none of these acts had been passed last winter by a Democratic Legislature, evidently with a view to political influence—but it would then be charged that we, calling ourselves Democrats, *par excellence* were trying to retain the advantage thus acquired. He had prepared his amendment in a spirit of compromise and conciliation, and hoped it would be acceded to or some other suggested.

Mr. [G]Randolph [blank in Advertiser] [A]supposed the idea of his colleague was not to incorporate a provision into the Constitution which would cause the people to vote against the whole of it, but he thought he had not looked far enough into his amendment. He should not have alluded to the last Legislature if his colleague had not, but he would refer to some of the acts to show the effect of the amendment. A little *niche* (Millstone) was taken from Middlesex and attached to Monmouth without the consent of either. Now by the amendment, before that can be restored, you must get the consent of *the township and both the Counties*, which of course could not be done. He likewise alluded to Hopewell and Tewkesbury, and said this amendment was worse than the two thirds vote because that might possibly be obtained.

Mr. Zabriskie said his colleague had very ingeniously referred to the acts of the last Legislature, but of none before. His object was a compromise, and not to take advantage of the acts of the last Legislature. They were wrong; he would say so publicly, and if he had been a member, he should have gone against them with all his energies—Such acts always react upon a party, and there is evidence of it in this instance.

Mr. Browning said that the gentleman might take a Whig measure for illustration. Suppose it was proposed to unite Bergen and Hudson again. By this amendment could the consent of both counties ever be obtained? It would be an effectual stop forever, to their re-union.

Mr. Hornblower said if he had regretted anything since the Convention had met, it was the introduction of this feature in the report. He had approached it with fear and trembling, and feared it was the fatal rock on which we were to split, and the vital question on which all the rest of our work depends. If we had met a year ago, he would have gone for the provision with all his heart, but he should now move to strike the whole Section out.—I never will consent (said Mr. H) in this House or out of it, to adopt such a provision under existing circumstances. When I heard the report it struck me as exttaordinary. I could not view it with any favor or scarcely with patience, this provision in our fundamental law after the proceedings of last winter. Years ago, the Legislature passed a law requiring six weeks notice to be advertised of these alterations, but that was repealed. Some time since, a new township was wanted in Bergen Co. It was put to a vote in the township as it should have been, but the election was prevented by a riot, and breaking the ballot boxes. The next Legislature having ascertained that a majority were in favor of it, created the township, and the last Legislature repealed it, and altered County and township lines all over the State, and the effect of this article will be to rivet them and fasten them on the State. I cannot but be reminded of the fable of the Eagle and the Young Tiger. The former alighted on the latter and clutched him in his talons and bore him in the clouds. By that time the tiger had embedded his claws in the breast of the eagle. The eagle finding his burden heavy, and himself wounded, said to the tiger *"If you will let go your hold upon me, I will mine of you." No*, said the tiger, *put me where you found me first, and then I'll listen to your proposition!*

Mr. Zabriskie withdrew his amendment.

Mr. Ryerson proposed an amendment, to require six weeks' notice of these applications and that no one county shall be created, not entitled to two members. He had given more than one vote here, for the sake of conciliation and was prepared to do so again. As to the allusions to the proceedings of the last Legislature, he would simply

remind the Chief Justice that the 6 weeks' notice law, was passed by a Whig Legislature only four days after the making of the County of Hudson, to fasten that upon us, so that by the repeal of that law, the account is pretty nearly balanced. Mr. R. subsequently changed his motion, so that a motion to strike out the section might be taken first.

Mr. Field was willing to withdraw the substitute offered by him. He had at first feared the agitation of the question here, and that the discussion would be unprofitable at least, but now I approach it with gratification and delight, without fear and trembling. Sir, when I remember the liberality with which gentlemen have acted here on former occasions. I have no fear as to this, for it has shown that the spirit of party is hushed within these walls.

When the section was first read, I did not know but the time had arrived when it was necessary to adopt some provision to prevent this kind of legislation. The time has been when the creation of a new county was a most difficult object to be obtained. Mr. F. alluded to the creation of Warren Co., and of Mercer, which he said had been agitated for twenty-five years, with almost a unanimity of feeling before it could be accomplished and he now believed that after another year, when the Legislature might restore those parts of townships and counties that have been torn asunder and place them where the people want them, another quarter of a century would roll around before the occurrence of similar legislation. He thought these laws were passed under the influence of a state of things, which could not soon occur again.

Mr. Brown was opposed to putting any provision in the Constitution upon a subject which the people had already condemned. Public opinion is stronger than a constitutional provision, and Mr. B alluded to the article in the old Constitution excluding voters not worth £50. He said the Legislature had altered that clause by a law, simply because it was not in accordance with public opinion, and that that law could not have stood a moment had it been otherwise. He was unwilling to insert any thing in the Constitution, which was a mere matter for legislation. He believed that in this case it was not necessary, for if any thing is settled it is that there will be no more of that kind of legislation, for fifty years to come. The people have taken hold of it, and said they would not have these things done merely to create political capital, and thought therefore that the whole section was unnecessary.

Mr. Wurts (V.P.) had no particular predilection for the report, but he did not regret it had been made—but he could not believe that the Committee who made it were actuated by any ulterior motives, and

to fasten on the State, what had been done last winter. The chairman of that Committee is not in his place, but I know he and the other members of the Committee would spurn that idea. Their motives were good. We all know that the Legislature have for years (and not for the last year only as gentlemen seem to think) been tampering with county and township lines, and it was the wish of the committee to remedy that great evil. I am not the apologist for the last Legislature. It may be that if I had been here, I should not have voted for the new county of Camden, and I certainly would not for the County of Hudson. The gentleman from Essex has told us of the struggle between the eagle and the tiger in the cloud. That, Sir, will be a death struggle to both if it is continued—both will be dashed down to destruction!

Now the committee wished to prevent this kind of legislation for all time. But he was as willing as any other gentleman to conciliate, and was glad to see party spirit entirely banished. If the section creates dissatisfaction, and it certainly does, I should be willing to see the whole matter left to the sense of the people. I want a vote of the people and not of a party, upon the new Constitution—and if any of our friends think that the proceedings of the last Legislature was so bad that they cannot sustain the Constitution, unless the door is left open to change what was then done, let the section be stricken out. He thought it was very well that notice of these applications should be advertised, but should prefer to leave that to the Legislature.—If it is thought otherwise, very well—but he must be a bold, very bold man who will hereafter advocate the creation of [illegible] county merely for political effect.

Mr. Ewing disclaimed any intention on the part of the committee to fasten that legislation on the State, or that any impure or sinister motive actuated him. He was entirely surprised by the feeling that the report had excited, and alluded to the fact that it had been produced by what had been said and done out of doors. The anecdote which had been mentioned has been traveling the rounds of all the quarters—but he was willing to see the section struck out or amended.

Mr. Clark made a similar explanation on behalf of the Committee.

Mr. Parker and Mr. Child were willing the section should be struck out.

Mr. Hornblower threw back with scorn the motives that had been charged on him, of saying that the Committee had intended to fasten these proceedings on the State. He had only said that such would be the effect of the section.

After explanations by Messrs. Wurts, Ewing, and Hornblower,

The section was stricken out, almost unanimously.

Mr. Mickle moved to strike out the section that no divorces shall be granted by the Legislature.

Not agreed to.

Mr. Ryerson moved to strike out the words in italics in the following section:

XXIV. No lottery shall be authorized by this state; *and the legislature shall pass laws to prevent the sale of all lottery tickets, except in lotteries which may now be authorized by a law of this state.*

Mr. Green advocated the motion. He said that was a proper matter for legislation. If there is to be a constitutional provision, let it be "that no tickets shall be sold in the state."

Mr. R's motion was agreed to.

Mr. Browning offered an amendment that no law impairing vested rights should be passed by the Legislature; which he advocated very ably and at length—but as the motion was made and advocated before, we do not repeat the report on the subject.

Mr. Zabriskie opposed it, and it was

Not agreed to.

Mr. Ryerson offered an amendment that "no law shall be passed depriving a party of any remedy for enforcing a contract which existed when the contract was made." Messrs. Stites and Green advocated, and Mr. Parker opposed it.

Mr. Vanarsdale thought it too broad and that it would prevent all variation of the remedy, which was not included under the section forbidding laws "impairing the obligations of contracts."

Mr. Green advocated the amendment. He said all must be satisfied that some legislation is required on this subject. He said it should be understood when the contract is made what the remedy is, and the law should not be allowed to step in and take away the remedy—thus laughing to scorn the principle that "you shall not impair the obligation of contracts," when you may destroy its value, or take away his remedy. Pass any law you choose taking away the remedy but let the creditor know when he makes the contract, what he has to depend upon—and let him continue to have the same remedy to enforce his contract, that he had when it was made.

He thought the principle of the amendment a fair, sound and salutary one, and he hoped earnestly it might prevail.

Adopted.

Mr. Vanarsdale moved that the 27th section be so amended that

the laws shall commence "Be it enacted by the Senate and General Assembly of the State of New Jersey."

Agreed to.

Mr. Stites moved to strike out the 28th sec. relating to the school fund. He had no reason why it should be embodied in the Constitution, and thought it had better be left to legislation, under which the system has grown up. Not agreed to.

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

On motion of Mr. Mickle,

The convention adjourned till to-morrow morning, at nine o'clock.

WEDNESDAY MORNING, 12th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Hall.

Mr. Jaques, from the select committee appointed to inquire into the propriety of instituting a court of conciliation, made the following report:

The committee to whom was referred the following resolution, viz:

"Resolved, That a select committee of five be appointed to inquire into the propriety of instituting a court, to be called the court of reconciliation, and that they report thereon," report—

That your committee, having had under consideration the subject submitted to them, have made diligent inquiry, and have been informed that courts exist in one of the governments of Europe [Denmark], and perhaps in more, constituted for the purpose of effecting reconciliation in all matters of controversy, previous to the recourse to legal proceedings. Your committee will briefly delineate the formation and duties of those courts:

In each town, or precinct, two persons are chosen by the people, who sit one day in each week, for the receiving of complaints, issuing summonses for the appearance of parties at the next regular day of meeting, and for hearing the parties already summoned. The courts sit with closed doors, and none but the parties themselves, or their special attorneys, are permitted to be present. The duty of the court is to hear the complaints and reply of the parties, and to endeavour to

induce them to adjust their differences amicably. As an absolute rule, nothing that passes in the court, is divulged by the members of it, and is forbidden as evidence in the courts of law. Should the attempt for reconciliation fail, the court grants to each of the parties a certificate, stating that they had appeared, but did not reconcile their differences. These certificates are required by the courts of law, in order to oblige parties to seek reconciliation.

The fee of this proceeding is very trifling, and is paid by one or both of the parties, as may be decided by the reconciling judges.

Your committee suppose that it is unnecessary for them to say anything in recommendation of a tribunal so simple in its formation, and so evidently useful; but they cannot refrain from calling the attention of the convention to the fact of the numberless cases which are subjects of lengthy, expensive, and vexatious lawsuits, which have their origin in trifling differences between neighbours and friends, and which the amicable agency of a third party could reconcile and set for ever at rest.

Your committee, being aware that the proposition submitted to them is of a novel character, believe that the extent of their duty will be complied with by submitting, in addition to the remarks already made, the recommendation that there be engrafted on the constitution, in the first section of the report of the judiciary committee, the words—

That the legislature may ordain and establish courts of reconciliation.

M. JAQUES, *Chairman.*

[G]Mr. J. stated that the committee did not all concur in the report; and moved that it lie on the table till the report on the Judiciary Department should be under consideration.

[J]Which was read, and,

On motion of Mr. Pickel, the report was ordered to lie on the table and be printed.

On motion of Mr. Ewing,

The convention resolved itself into committee of the whole, Mr. Cassedy in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on the Legislative Department.

[A]Mr. Vroom offered an additional provision that when in extra session the members shall receive the compensation fixed for the first forty days of the ordinary session which was agreed to.

Mr. Vroom said in the old Constitution there was a form of oath

fixed for members, and it would be as well to fix it here, and he offered a section containing the oath, but as it was suggested that the Committee on general subjects had this under consideration, it was referred to them.

Mr. Williamson said the 22d section had been struck out, and no substitute offered, and it appeared to him that some general provision should be made for new Counties. He offered a section "that no new County should be set off unless each one as well the new County, as the one from which it may be set off should be entitled to at least two representatives under the ratio there established."

Mr. Vanarsdale said it was a subject worthy of the attention of the Convention. This has no relation to anything which had passed, but was confined solely to new Counties. It was a wholesome rule, under which no injustice could be done, and he hoped to see it incorporated.

Mr. Ryerson suggested that something should be incorporated about previous notice, so that members might be selected with reference to that intention.

Mr. Ogden said one good effect of this would be, that after the Legislature had met, no new projects could be mooted.

Mr. Browning suggested that there was still a defect as it related only to new Counties, and not to the changing of County lines, and he wished to have the words "or altering County lines" inserted, which Mr. Williamson accepted.

Mr. Ryerson offered the section proposed by him yesterday requiring a notice of six weeks before the election, and continued publication until the meeting of the Legislature, which Mr. Williamson accepted.

[G]Mr. Kennedy moved to substitute one month's notice.

Mr. Condit suggested that if the Convention would adopt his plan of senatorial districts, it would put an end to all difficulty from the change of counties.

[A]Mr. Zabriskie thought it would prevent discussion if Mr. Williamson would adhere to his original amendment. The Convention would readily adopt that, which was much more simple.

Mr. Randolph thought this would be the most advisable course. The other was going into a ticklish subject, on which the people in some parts of the State were easily excited. He had no objection to having notice given, but he thought that the formation of new counties and altering of county lines, did not come together very well.

Mr. Parker moved [G]that no bill for the establishment of a new county should be of force, until approved by two legislatures.

Mr. Ewing thought if we attempt to interfere in regard to county lines, we should find ourselves in difficulty. The people of Cumberland were anxious that a part of their county, lately cut off, should be restored to them. This amendment would prevent that.

[A]Mr. Ryerson then withdrew his amendment, and Mr. Williamson's section was in order.

Mr. Hornblower thought it did not go far enough as there was nothing to prevent the changing of county lines, which could be so done as to leave one county with one member only, and add one to the other county.

Mr. Parker withdrew his motion.

Mr. Ewing said it was a delicate subject as the Convention had already discovered, and they had better let it alone altogether, and leave it to the good sense of the people. They had better not undertake to make any constitutional provision.

Mr. Allen hoped Gov. Williamson's amendment would be agreed to. It was right that no new county should be set off unless it was entitled to at least two members. It would also be for the protection of the large counties who had made a concession in agreeing to the present formation of the Council. A new county thus set off would have as much power in the Senate as the large counties with 7 representatives, and they would have seven times as much power as they ought to have according to their representation.

Mr. Ewing said this did not cover the whole ground. It ought to go so far as to prevent the changing of township lines, and if they could not cover the whole ground they had better let it alone altogether. This was the most serious evil, and as it was not met at all, he moved to lay the whole of the amendment on the table, or postpone it. It was accordingly postponed.

Mr. Browning offered a proviso to be added to the 19th section, providing that nothing shall prevent the right of the State from taking the Camden and Amboy Rail Road, and the Canal and feeder under the terms and conditions heretofore agreed upon. He offered this he said as the Legislature might feel themselves embarrassed by this section without this provision, as it might be of infinite importance hereafter that the State should if they saw proper take this property not perhaps as owner, but for the purpose of having the control.

Mr. Hornblower advocated the amendment.

Mr. Ryerson hoped it would not prevail. The Legislature might find it difficult to get the people to vote for borrowing money for this purpose. That was the only way in which the section would interfere with

the right of the State on this subject. Suppose at the end of 25 years the Legislature should think proper to take the works at their appraised value, and should pass a law to borrow the money necessary to purchase them. That law would have to be submitted to the people and they might refuse to grant it.—This was the only difficulty in the section as it now stood. But on the other hand, while we have legislated to prevent the incurring of a state debt, this provision would give the Legislature the power to buy these works without the consent of the people. The people throughout the State would say we were legislating for those companies. It would be a direct temptation to the companies to buy up and bribe members to take the works off their hands. If the works should become worthless, which would be easiest, to get the people to vote to pay for them, or to induce the Legislature to take them without consulting the people?

Mr. Wurts moved to add "to take the several works of internal improvement or any or either of them," which would leave it optional with the Legislature.

Mr. Browning accepted the amendment. [C]Mr. Browning explained that without his amendment, there might be serious obstacles to the purchase of the Canal and Rail Road.

[A]Mr. Hornblower said if the amendment left it in the power of the Legislature to incur this debt, he would not vote for it. He had not so understood it.

Mr. Jaques objected to the amendment. He did not like the idea of a State entering into speculations. It did not suit his ideas of morality. He had no idea that the State should set up a broker's shop to speculate. If we could exact a fair sum, it would be very well, but to take it from the company and sell it at an advance of a million or so of dollars, did not suit his code of ethics.

Mr. Browning said the right of travel on these routes was deemed of great importance, so much so that the State reserved the right to take them for its own benefit. The taking of them at the end of their terms may be of very great importance to the State. It forms a part of the contract. This Convention could in no way fetter or change the companies' rights, but they might incorporate provisions which might embarrass the state; as one party must remain free, he was in favor of having the other also free. It has been stated that the only embarrassment under the section, would be the submitting it to the people whether they would incur the debt. But there was a provision that the debt so incurred must be raised by direct tax in 20 years, and that was a difficulty strongly in favor of the company. Great advantages might

accrue by taking the works and disposing of them to others. He had no idea that the State would have any intention of keeping them. The Rail Road cost $3,000,000, and the company could ask no more for it, but if it should be worth six millions, he certainly thought the State should have the power to gain that difference and apply it to their school fund or to any other purpose they might see proper.

Mr. Vanarsdale thought the proviso would defeat all the good intentions of the section. If it could be passed, it might include all the works. It would set a golden harvest before us, and suppose we should reap it, we might find ourselves in the same position as other States burthened with enormous debts. He was adverse to the State entering into any speculation at all. How could the State manage Rail Roads? They could not, and disaster after disaster would fall upon the State. They would be in the hands of agents, who might become faithless, and the State would be burthened with debt. The section as it is puts an end to all such hopes or expectations, and he was strongly in favour of it as reported.

Mr. Field hoped Mr. Browning would withdraw his proposition as it was evident it would meet with little favor. He thought the provision in the section wise and prudent, that the people should have a voice in the purchase of these works. He was opposed to giving this power to the Legislature, and members would well remember the agitation when this same proposition came up a few years ago.

Mr. Hornblower withdrew his section, as he had misunderstood it when the amendment was offered.

Mr. Vroom said he never would have voted for the section, without the provision that the people should be allowed to vote upon the subject of increasing their public debt. The gentleman should remember that the Legislature have 3 years after the appraisement to elect whether they would purchase the works or not, and although the company might for one year influence the people, they could not continue that influence for two or three years. He would rather submit to lose the works, than to have the State saddled with debt.

Mr. Browning withdrew his amendment, but insisted that it would leave the State without the power to purchase these works at all.

Mr. Stites regretted that it had been withdrawn. He moved to strike out 20 years in the 19th section, and insert 35. It was impossible that the people now would ever consent to purchase the works, as the direct tax to be raised annually to meet the debt, could never receive the consent of the people,—they had to pay for the works in 20 years.

Mr. Ryerson suggested that it had better be left until the section

came in Convention, and Mr. Randolph hoped the amendment would be agreed to. [G]He wished the state to have some power of prescribing some terms, when the companies ask for a renewal of their charters.

Mr. Allen said this was a mistake. The charters of the companies are perpetual. [A]If the State did not elect to purchase the works, the charters ran on to perpetuity. [G]The state, too, has a right to buy the rail road in twenty five years, and the canal in fifty years. When, then, can we get the road from Bordentown to New Brunswick. Not for fifty years; so that if the state should, at the end of twenty five years buy the Camden and Amboy Rail Road, she would have another road competing with her. The state must buy both, if either. They have cost now $7,000,000, and this will be increased, probably, to $10,000,000. Now, if we submit the question of incurring a debt of $100,000, to the people; shall we not also submit the more important question of a debt of $10,000,000. But he was in favor of extending to thirty [A]or thirty-five [G]years the term within which every state debt might be paid. He had no idea of overburdening one generation with enormous taxation, in order to bequeath a princely estate to the next. [A]The longer they had to extinguish the debt, the more likely the people would be to purchase the works.

Mr. Stites' motion to strike out 20, and insert 35, was carried—ayes 31, noes not counted.

Mr. Pickel moved a new section to come in after 25th section as follows: "All property hereafter shall be taxed according to its value, that value to be ascertained in such manner as the Legislature shall direct, so that the same shall be equal and uniform throughout the State.

No one species of property for which a tax may be collected, shall be taxed higher than any other species of property of the same value."

Mr. Pickel advocated this amendment briefly.

Mr. Field said he did not object to the principle, [G]though he thought it would be difficult to put it in practice; [A]but if this was carried out, it would relieve the Banks very materially, for if any one species of tax was unequal, it was that on the Banks. No other property was taxed one quarter so much. Adopt this rule, and instead of the Banks paying some twenty-five or thirty thousand dollars a year to the State, they would pay only three or four.

Mr. Pickel said he was only tenacious as to the principle, and exceptions might easily be made if the Convention saw proper.

Mr. Naar advocated the amendment. The final burthen of the tax fell on the farming interests, and he considered it unjust and unequal.

A farmer may own his own farm which is perhaps mortgaged to its full value and pays taxes on it while the mortgagee who actually does own it, pays none at all. So too with personal estate, the tax was extremely unequal, and he instanced a case in his own county where a gentleman undoubtedly the richest there, paid only some two or three dollars tax, while he and others who were much poorer paid twenty and thirty dollars.

[A]Mr. Naar said that the amount paid by the banks was not so much a tax as a bonus for their special privileges, and might be so called by the laws. He was very anxious to relieve real estate of the burdens now laid upon it.

Mr. Randolph was in favor of taxing personal as well as real estate: but the effort to do it had given great dissatisfaction in this state, and he thought it impracticable. [He] [A]was decidedly in favor of the principle, but thought it could safely be left to the Legislature.

[G]Mr. R. S. Kennedy said if we adopt this principle, the assessors must value every horse in the state separately, and every other species of property.

Mr. Naar contended that this would be right and that a man who owns an old horse ought not pay as much tax, as Mr. Gibbon pays for Fashion.

[A]Mr. Ryerson suggested that this was not the appropriate time or place to consider this proposition and that it had better be referred to the committee having general objects under consideration.

Mr. Naar saw no objection to taking this course, but was in favor of having the whole system placed on a more equal footing.

[G]Mr. Vroom said these difficulties were obviated in other states; and in this state, they were more imaginary than real. [He] [A]said as the matter was going to this committee, he would take the liberty of suggesting one or two plans or considerations. In the first place the proposition of Mr. Pickel to direct that all property should bear an equal burthen and pay taxes according to its value. Another way, if you do not extend the principle so as to take in all real and personal estate, is to have all property real and personal which is annually assessed, rated equally. [G]It is not now. [A]One other mode is that real property should be taxed according to its valuation or a compound of its productiveness and valuation.

Mr. Vroom cited several cases of the unequal operation of the tax law. [G]He had prepared some amendments to meet these objects [A]and the whole matter was referred, as suggested by Mr. Ryerson, [G]to the committee on matters not referred to other committees.

Mr. Pickel also withdrew his amendment and handed it to the same committee.

[A]Mr. Stokes wished to offer an amendment. In the 28th Section there is a provision that the school fund shall be sacredly devoted to the support of Common Schools. The Committee will bear in mind that yesterday I proposed to strike this Section out for reasons which I gave at the time, believing that the whole subject of Common Schools had better be left to Legislative enactment, than to incorporate a provision such as is contained in this Section into the fundamental laws of the State. But the Committee differed from me, and it now becomes my duty to attempt the next best measure for the security of the liberties of the people, which remain, to be practicable; and so far as it may be in the power of this Convention, to prevent that fund, which was designed to be a blessing from becoming a curse.

It is not possible that any subject can be of more importance to the people of this State than the subject of Education. We all know its influence. It is the means by which sectarian views in religion are transmitted and implanted in the mind of man. And if this great fund, which has hitherto been left to the control of the Legislature, is by this Constitution to become a permanent fund for the support of free schools, and one uniform system is to be established throughout all the state, as has long been desired by certain citizens; and if this system is to be established upon any basis to be agreed upon by the Legislature, a superintendent or Committee appointed for the purpose and enforced by all the sanctions of law; and all such as may not be disposed to submit to its arbitrary dictations, to be deprived of their just share in the fund, then may we not expect to see enacted here the scenes of confusion and cruelty which we have of late witnessed in the two great neighboring states of New York and Pennsylvania? Like causes produce like effects; and there is no subject upon which the people have a better right to be sensitive, than with an improper interference with the education of their own children. What parent, having any regard for the welfare of those who are dearer to him than life itself; or who has any regard for the liberties of his country, can look with complacency upon a power about to be given by the fundamental law to any body of men to interfere in so delicate a matter?

I fully agree with the member from Somerset who yesterday said that when Constitutional provisions are in opposition to the feelings and opinions of the age they afford but a very faint security. Yet, notwithstanding, I am not without a desire to throw around this provision in the Constitution some safeguard, that those who come after us may

be at least admonished of the fears entertained by this Convention that what was intended for a great good, by bad management might become a great evil; and with this view I offer the following amendment, to come in at the end of the 28th Section:

"*Provided*, said fund shall not be applied either directly or indirectly to promote any SECTARIAN VIEWS IN RELIGION."

The Committee will perceive that the object of this amendment is to prevent this fund, which belongs to the people of the whole state, from being employed for purposes entirely foreign from the ostensible object of its creation: and I will here admit that I am entirely opposed to this system of Common School Education, which takes from the parent a proper superintendence, and places the children under the control of the state.—But if this must be exercised at all, I desire that it may not encroach upon the rights of conscience, which have been transmitted to us from the first settlement of the country.

It is from this improper interference as practiced in the two great states already alluded to, that have originated the recent scenes of violence and carnage in a neighboring state; and this may be only the beginning.

Mr. Field said he had prepared an article on the subject of Education, and with the consent of the gentleman he would read it, and propose that all be referred to the Committee having in charge the matters not embraced in the various reports. Mr. Field then offered two Sections to come under a separate article of Education, as follows:

OF EDUCATION

1. The virtue and intelligence of the people are the only foundations upon which free institutions can safely repose. It shall therefore be the duty of the Legislature to provide by law for the establishment and support of Public Schools, and to adopt such measures as they may deem necessary, for the purpose of securing to all the inestimable blessings of Education.

2. The fund for the support of Free Schools, and all monies, stock, or other property which may hereafter be appropriated for that purpose, shall be securely invested and remain a perpetual fund, and be sacredly devoted to the purposes of Education: and it shall not be competent for the Legislature to borrow, appropriate or use the same or any part thereof, for any other purpose under any pretence whatever.

[G]Mr. Stokes withdrew his amendment.

Mr. R. S. Kennedy offered an amendment [A]providing that "Sectarian Schools, established by religious denominations, should not be considered as Common Schools, nor be entitled to any portion of the School Fund."

The committee then rose and reported the Report as amended.

[J]On motion of Mr. Randolph,

Ordered, That the report and amendments lie on the table and be printed.

On motion of Mr. Field,

Ordered, That the subject of common schools be referred to a select committee of five.

Messrs. Field, Stokes, Parker, Halsted, and Ryerson were appointed on said committee.

On motion of Mr. Ewing [Allen, according to the Gazette],

The convention resolved itself into committee of the whole, Mr. Parsons in the chair, upon the consideration of the report of the Committee on the Appointing Power and Tenure of Office.

[G]Mr. R. S. Kennedy moved to amend so as to leave it optional with the legislature, instead of making it imperative on them to organize, enroll and arm the militia.—Not agreed to.

[The Advertiser reported that Kennedy "moved to strike out the 1st Section, which was not agreed to, and he subsequently moved to strike out all from the 1st to the 10th section inclusive, but consented to take the question on striking out the 2nd section as a test vote, and it was not agreed to."]

Mr. Ryerson moved to amend so as to leave it discretionary with the legislature, when to arm the militia.

Mr. Ewing opposed the whole militia system, as rotten from its foundation, and injurious to the morals of the state. He moved to strike out the whole section. [A]Until Congress framed a law for organizing the militia the states had no right to act in the matter at all. He however withdrew his opposition, desiring the Convention to note his protest against their action.

[G]Mr. Clark defended the section. Whatever objection we might have to the manner in which the militia had been organized, yet the maintenance of a militia system was a point not to be omitted in our system of state government.

The section was also defended by Messrs. Dickerson, Zabriskie, Naar, Randolph, Browning, Condit, Hornblower; and the motion to strike out disagreed to.

Mr. Ryerson withdrew his amendment.

Mr. Allen moved to add that the militia should not be drilled except in time of war. Not agreed to.

Mr. R. S. Kennedy moved to strike out the second section, prescribing the mode of appointing officers of companies. Not agreed to.

Mr. Connolly moved that the field officers should be appointed by the privates, instead of by the commissioned officers.

This was advocated by Messrs. Ewing and Connolly, and opposed by Messrs. Zabriskie, Naar, and Clark, and disagreed to.

After going through all the sections respecting the militia, [A]agreed to without any amendment, [J]the committee rose, reported progress, and had leave to sit again.

On motion of Mr. J. R. Thomson,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

On motion of Mr. Ewing,

The convention resolved itself into committee of the whole, Mr. Parsons in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on the Appointing Power and Tenure of Office.

[G]Mr. Ewing moved to amend so that the chancellor and judges of the Supreme Court, and Court of Errors, should be appointed in joint meeting and not by the governor and Senate. [A]He said when the report was first presented to the Convention, I felt called upon by an imperious sense of duty to oppose what I consider a dangerous innovation upon the principles of our government and one which would be injurious to the best interests of the people of N. Jersey—and further reflection and conversation with gentlemen of intelligence and influence have confirmed me in that opinion.—When the founders of our Constitution assembled at that critical period to perform the duty they had the experience of a method of appointment like that proposed in the report. The Governor made the appointments by and with the advice of the Council—and it is well known what authority his nomination had. None were appointed unless they would support the British Government, and their power over the rights of the people of this State. They were called Tories, and their interests were hostile to those of the people of N. Jersey; and to that growing feeling in this and other States which resulted in the revolution. They were men of aristocratic character—and our fathers were well acquainted with their principles, and their object was to guard against the future exercise of this arbitrary and dangerous power, and they gave the power of appointment, most judiciously, to the Joint meeting. The men they appointed, we many of us well remember. They were men of the most distinguished character and standing before the world, in any age or country. And this mode of appointment would ever since have received the sanction of the people as republican and proper, if it had not been greatly abused. This abuse however, is no good argument against it, and now we are about to go back to where we were 70 years ago, and engraft this dangerous and aristocratic feature in the Constitution, of giving the power of appointment to the Govetnor and Senate! thus putting all these appointments in the power of a few men who are raised above the immediate control of the people and whose tenure of office is increased to three years. The Senate is composed of 19 members—so that the Governor and ten men (a majority) elected for three years, will have the whole power of appointment, and if they should be of the same party, they may unite to promote the interests of themselves, their families and their party. Look at New York where this principle is adopted. Are not all the appointments controlled by a clique—by a few men who have all the power in their own hands?—It may happen too, that these *ten* men may all be from a particular part of the State. Will they know the men of ability and integrity from other parts? No, sir. They will have to make them on second hand recommendations and are not competent therefore to make these appointments, even if there was no fear of corruption. But suppose the Governor and Senate should be of different parties. The Governor will only nominate his own political friends and his nominations will be disregarded by the Senate and the offices will not be filled and the people will suffer great inconvenience. Then a great strife will ensue. The Governor will be supported by all his friends and the Senate by theirs—and it may be in the midst of a Presidential election when all are actuated by a double political zeal and both parties are more unyielding and obstinate.—Then we will see the strife between the Eagle and the Lion. There will be no accommodation—but it will be a struggle of blood!

This is a state of things to be dreaded. The Governor will go out of office after three years and receive only the curses and execrations of the people—for where one gets an office, twenty are disappointed. In such circumstances I had rather fill the lowest office; that of constable, in a township, than to be the Governor of the State.

The objection, as I have said to the appointments by Joint meeting, comes from that power having been abused. Now we have endeavored as far as possible to purify the representatives of the people, by taking

from them all sources of corruption—We have provided that no members of the Legislature shall be appointed to office. This has been a great evil; and members have taken home with them from the Joint meeting commissions, which the people never intended or would have consented to. We have given the election of Justices, Clerks and Surrogates to the people. That is right; and if they elect bad officers, it is their own fault.

Again I object to giving this power to the Governor and Senate for it will look like *star chamber* appointments. The proceedings will be as secret as the chambers of a dungeon. But what is done in Joint meeting is open to all. The Galleries and Lobbies are crowded with our constituents. The votes of the members are watched, and if they vote against the will and wishes of their constituents, it will be remembered against them when they are again candidates for office.

These are some of my objections to the proposed change. I shall not trouble the Convention again upon the subject. I felt that it was my duty to say this much, and that my honor and the interests of my constituents required it of me, and if unfortunately my amendment shall not prevail, I shall feel that I have done my duty—but I shall despair of ever seeing any other constitution adopted, than that under which we live.

Mr. Zabriskie replied at length.

Mr. Chairman—I do not rise to address the Committee from choice but from a sense of duty. The Committee Sir, who reported the provision now under consideration, deliberated fully upon the several subjects contained in the report. They were fully sensible of their great importance, and the influence that the change proposed to be made in the location of the appointing power would produce upon the interests of the State, and the feelings of the members of the Convention. There existed among the members of the Committee a diversity of sentiment in relation to the locality of this power. Some insisted upon placing the *whole* power in the Governor and Senate. Others were for electing a much larger number than the report proposes. Also a small number desired to continue the appointing power in joint meeting. After full and repeated discussion, and much deliberation it was determined to *distribute* the power as is proposed in the report. It will be presumed that the Surrogates, Clerks of counties, and Justices of the Peace are to be elected by the people. That the Treasurer of the State, the Keeper and Inspectors of the State prison are to be appointed by joint meeting. And the residue of the officers of the State are to be appointed by the Governor with the advice and consent of the Senate. It was

hoped and believed by the Committee that this distribution would harmonize the views of the Convention. The honorable gentleman from Cumberland (Mr. Ewing) has moved to strike out that portion of the section conferring the appointment on the Governor and Senate, and substituting a provision referring that power to the joint meeting. That gentleman objects to the provision as reported, because he insists it is an aristocratic and dangerous power which ought not to be engrafted on this Constitution. He likens the Governor in the exercise of this power, to a King exercising royal prerogatives, and the Senate to a "Star Chamber" doing its iniquitous work with closed doors and in secret. This is certainly a strange argument to be presented to the members of this Convention, in this day of political enlightenment. In the joint meeting for which the gentleman contends, there exists *no responsibility whatever*, and all power that is independent is *absolute* also. No *individual* member of the legislature ever considered himself responsible for the acts of joint meeting. The individual was merged in the mass. It was impossible therefore to reach him. Not so by the plan proposed in the report.—The Governor is the responsible agent in all the appointments made by him. If the Senate should reject any nomination made, he must nominate again, and is still responsible, and so on until a confirmation is secured. The Governor is the only true representative of the people. He will be elected by a majority of the whole people of the State. It is peculiarly proper therefore that he should be entrusted with the exercise of the responsible Executive power. There is no motive that can prompt him to abuse that power. He is ineligible after his term, for three years. No inducement therefore exists for prostituting the patronage of the State to purposes of personal advancement. If you confer the power of appointment upon joint meeting, you violate one of the great principles upon which our institutions are based, to wit the separation of the different departments of the Government. You connect the power of appointment with the legislative department. This is certainly one of the most dangerous combinations that could possibly be created. Let us examine for a moment the effect of this feature in the past history of the State, and from the experience thus presented let us gather counsel to direct us in the future. In the first place the deleterious and corrupting influences of this joint meeting system, is first visible in the primary action of the people. Individuals in the different counties who desire appointments seek by all the influences at their command to secure the nomination of candidates favorable to their pretensions. This influence is exercised secretly, and without a knowledge of the people. Thus in many

instances are the people cheated out of an honest representative by this sort of political legerdemain. But the evil does not stop here. The representative thus elected proceeds to Trenton, takes his seat in the legislature *solely intent* on discharging his obligations to his principal. To attain his object he directs all his efforts to induce members to pledge their votes for his friend, at the same time promising his vote and influence in their behalf for the attainment of any object they may have in view. Thus is the influence of appointments made to control the legislation of the State, regardless of honest principle or the interests of the people. The lamentable effects that have been produced by this sort of influence upon appointments, legislation, and the public morals cannot be estimated. One word as to the mode by which the appointments are determined and I will close my remarks. The gentleman from Cumberland fears the action of a "Star Chamber" and yet advocates Joint meeting. Mr. Chairman, it is known to that gentleman as well as all who hear me that all the appointments made by joint meeting are previously determined upon in caucus. Members sit there with *closed* doors and by ballot determine all the appointments of the State. Here sir, you have a true representation of a *"Star Chamber."* Members deliberating in secret—voting in secret and precipitating upon their devoted constituents a host of officers without the least responsibility. Such sir, is the action of Joint meeting. The plan reported by the Committee avoids all the evils referred to while it secures perfect responsibility in the agent. This is the surest guarantee of fidelity that can be afforded to the people.

Mr. Dickerson asked if the state is prepared for this total innovation. He believed not, and they would not consent to it. There is nothing they expect more anxiously than that we should preserve all the features of the old constitution that we can.

The old system has worked well. There is a responsibility. The names of members are called for the yeas and nays. If the members do not regard their responsibility, it is the fault of the people who elect such men.

There is less responsibility in the other mode. If we had limited twenty years ago, the number of appointments by the joint meeting, we should hear now no complaints of abuses from this source.

And are not the members as responsible for their appointments as they are for their laws? To give this power to the Governor and Senate will be in effect to give it to the Governor alone. If they are of the same party, his will, will be theirs and he will control them. We had better give it to him alone for then there would be no divided responsibility. If there is a small majority against the Governor, it will be a continual scene of management and intrigue to induce them to confirm his nomination and betray their party. But if the majority is large, his nominations will not be refused. Look at the state of things at Washington now, where more than half of the nominations of the President, have been either rejected or suspended. Some of the officers too, are of the greatest importance. Such as Judges of the Supreme Court. I will not say whether the President or Senate is wrong, but the system is wrong, and much mischief grows out of it.

If the Governor is to nominate, I should prefer that the Assembly should confirm. They are the more immediate representatives of the people. Each County in the Senate has one member and I hope will have, but it will be unfair to give the smaller counties this power over the larger ones. This too will increase the importance of the Governor and will increase party spirit. We shall have *Baltimore Conventions* here [the Democratic Convention of May 26, 27, 28 and 29, which nominated Polk and Dallas for President and Vice President; there was much bickering and dickering reported], and all the intrigues for President there, will be going on here for Governor, or on a smaller scale. It is said he is the representative of the people. He may be in quiet times, but generally he is the representative of a party. He will be a stern uncompromising Whig, or a staunch and unflinching Democrat of the Jeffersonian School dyed in the wool. If I were sure that he would always be of my own party, I might consent to it, but I don't think it will be so. These appointments should be so made that we should be willing to submit to them when we are in the minority, and I should not, if made by the Governor and Senate.

Mr. Browning, if there is any one part of the old Constitution which I have heard condemned more than any other, it is that which lodges the appointing power in the Joint meeting. This complaint I have been accustomed to hear ever since I have heard or known any thing of appointments. The complaint has been general, well founded and the natural result of that connexion which it creates between the Legislative and Executive branches of the Government.

The power of appointment to office is an executive power. It is the duty of the Executive to see that the laws are faithfully executed; and hence the appointment of persons to office, by whom they are to be executed, is a branch of executive power. It is the business of the Legislature to *create* the laws; of the Governor to execute them; and whenever you blend or consolidate their respective duties, you unite distinct branches of government and destroy their purity and in-

dependence.

Some member of the Legislature desires an office—another has charge of a divorce bill—a third is interested in Rail Road acts. The bargain is if you will go for my office, I'll interest myself for your law, and the evil which has resulted and must result from such inevitable combinations, when the appointment to office and the making of laws, are vested in the same body of men, is not easily estimated.

I appeal to the members of this Convention who have been in the Legislature, if these evils do not exist, and if they do not arise from the bargaining and intrigue shamelessly conducted at every session of our Legislature, and by all parties.

These combinations for office begin with the primary assembling of the people—a clerkship or Surrogacy of a county is about to become vacant. The candidates for the place leave their respective friends, travel the county attending the township meetings and procure delegates of the proper stamp to the County Convention. The nominations are made—not on any fitness for legislation—but because they favor the appointment of someone or other of the candidates. They are elected. The candidates and their friends follow them to Trenton—aid is procured from some influential person here; and the corners of the streets, the Hotels and the lobbies literally *infested* by the aspirants and their friends who resort to every means that artifice can devise to accomplish their ends. The fountains of legislation are poisoned and bad laws and bad appointments are the inevitable result.

The appointing power Mr. Chairman must be lodged somewhere. The question now presented, shall it be in the Governor or the Joint meeting?—That is, in *Caucus*. The Governor is a man, in whom the people have confidence, having a physical and legal existence, and responsible to the people; but the *Caucus* has neither a legal nor a physical existence & is responsible to nobody or nothing. It is the offspring of party, of party excitement, the bane of all republics, and it lives and feeds on party. So long as the appointing power is lodged in the joint meeting appointments must and will emanate from a Caucus.

The members of the Legislature belonging to the dominant party, resolve themselves into a caucus. They lock themselves at night in one of the upper rooms of this building—the "Star Chamber" referred to, adopt secret rules of action, vote by ballot so that it cannot be known even among themselves, what they individually do, and secrecy is enjoined on all that is openly said or done—And all is finally resolved

in the silent potency of the ballot box. The deed is done. But who did it? Can any one tell? Caucus is the reply. But who is caucus? An irresponsible nothing. Will you trust your Governor elected by your own voice, and responsible to you, or will you trust an irresponsible *King Caucus*. I had much rather trust to one man, who can be held up to the admiration or scorn of the people, for his good or bad conduct than to any body of men acting without the probability of fixing responsibility upon any one.

But the honorable member from Morris (Mr. Dickerson) has referred to difficulties and evils growing out of the appointing power in the President of the United States. Wherever the appointing power is lodged, there must and will be difficulty. It arises from the imperfections of all human institutions, but where can it be most securely placed is the difficult question. Evils do exist at Washington, but, Mr. Chairman permit me to inquire of the honorable member from Morris, what would be the probable state of things if the appointing power of the United States, had been given to the Senate and House of Representatives in joint meeting? Who would be responsible to the people for all the appointments? Resolve the national departments of legislation into a political caucus, and call upon this creature of party and party corruption to answer, and not so much as an *echo* will answer back.

But we are told by the honorable member from Cumberland, that give the appointments to the Governor, & they will be controlled by a *clique*. It may be Mr. Chairman, that he will have his admirers, his favorites, and still be responsible. Let me ask, however, have not the appointments of the state, been controlled for the last 10 or 15 years by a *clique*? Aye, Sir, and by a *clique* having no *responsibility* behind it—not a Governor, but a legal, yet potent nothing—a *caucus*. This combination of Executive and Legislative powers is wrong in theory and wrong in practice. Bad laws and bad appointments are its legitimate offspring.

Let us, Mr. Chairman, in this matter learn from experience. I know of no other lamp by which our feet should be guided. Look round upon the neighboring States. Their executives are charged with this Executive power. You may hear complaints, & complaints must and will be raised against every appointing power; but do you hear of any desire, any petitions of the people, to take this power from their executives, and give it to their legislatures?—I have heard of none. The Constitutions of the old states, and of the new, those framed years ago and those framed recently, confide this power in the execu-

tive, and wisely too. Mr. Chairman, it is the part of political wisdom to hold to strict accountability the depository of this delicate and important trust, and to deposit it where the accountability may be brought to bear.

To confide it to one man, you place the responsibility on him alone, but to confide it to a bare majority of a body of men, *one man* must make the appointments, but the responsibility rests on *no one*.

I hope the report in this respect will be adopted and that the amendment will not prevail.

Mr. Field. Mr. Chairman, as one of the Committee on the Appointing Power, which presented this report, I feel it incumbent upon me to say a few words in its vindication. And this duty becomes the more necessary because we are so unfortunate as to be deprived of the aid & assistance of the Chairman. We find his power and influence and eloquence arrayed against us as to this feature of the report.

The subject of the appointing power is one of the most delicate and difficult subjects which the Convention will be called upon to determine. It is surrounded on all sides with difficulties and embarrassments. Place it where you will, it is always liable to be abused—whether it be given to the Governor, the joint meeting or to the people. But we are now called upon to do, what is frequently necessary to be done, make a choice of evils; and we all hope that we shall choose wisely and well. I have looked forward to this discussion with great interest. I know the struggle must come between Governor and Senate and the joint meeting; and I do not shrink from avowing my opinion, formed after much reflection and some experience, that the power should be given to the Governor and Senate.

The Committee recommend that certain officers shall be elected by the people. I presume there will be no difference of opinion as to them, except, perhaps, the Surrogates. But as to the Judges of the Supreme Court, the Chancellor, &c, the question is, shall they be appointed by the Governor and Senate, or joint meeting? For none I presume wishes them to be elected by the people. I say that if the question was, whether they should be appointed by the joint meeting or by the people, I should not be prepared to give my vote; but my judgment and feelings would incline me to vote in favor of giving them to the people. The controversy now, however, is between the Governor and Senate and the joint meeting. And my mind is fixed—my judgment is settled. I go for the Governor and Senate; I go for taking away from the joint meeting every vestige of the appointing power, except that of Treasurer and Keeper and Inspectors of the State Prison.

We have been told that if we make this change the people will not sustain us. I hope no member will allow his vote to be controlled by such an opinion. We may err as to what are the wishes of the people. Let us exercise our own judgment, and if we are led into error, and our labors do not satisfy the people, we shall at least enjoy the smiles of an approving conscience.

I am in favor of giving the appointing power to the Governor because it is an *Executive* power—the *great* Executive power. If this is not an Executive, I beg leave to ask, what is an Executive power? You may call your Governor the Executive, but if you deprive him of the appointing power, he is the Executive only in name. There are two great departments in government, the Legislature and the Executive. The Legislature make the laws and the Executive is to see that they are carried into execution. But he cannot do this himself. It must be done through the instrumentality of others. Then he must appoint those who are to be the instruments for carrying the laws into execution, or else he is not the Executive. But will you allow the *Legislature* to appoint officers to carry into effect, *their own laws?* If you do, you create a despotism. You may tell us if you please, that the Legislature is the representative of the people, but give them executive as well as legislative power and they constitute a tyrannical government, call it what you will.

If there is any one principle of government that is well defined and settled, it is this that the different departments are to be kept separate and distinct. I know it is sometimes difficult to keep them from running into each other, the lines are drawn so closely together; but if you make the Legislature the appointing power, you break down these lines altogether, and destroy the distinctive character of the government.

We are told too Mr. Chairman, that the members of the Legislature are the immediate representatives of the people. It is true sir: but the representatives for what purpose? To make appointments? No, sir—no, sir. But to make laws. The Executive is the representative to make appointments—elected directly by the people, for that very purpose.

Again. I say that appointments can be better made by one man, than by a select body of men. No argument, I apprehend is necessary to prove this. All will admit it, other things being equal. Why, when we assemble bodies similar to this we find it necessary to appoint a President. It is necessary that various committees should be appointed, and this duty is entrusted to him—not because he is wiser, or better or more honest than others, but because this power is better exercised by

one man than by a body of men, and all writers agree, that unity is essential to the proper exercise of this power.

Again: there is more *responsibility* when the Governor makes the appointments, than when the Legislature do. I can not see how there can be any difference of opinion on this point. The Governor is *solely* responsible. But when the power is exercised by a select body of men, no one is responsible. Does not experience teach this? Take the case of the last Legislature, not because that body abused the appointing power more than others have done, for every Legislature abused this power most grossly. Whom do we hold responsible for it? We have upon this floor several members of that body. Here is my excellent friend from Somerset, and there is the very worthy member from Hunterdon, and there is our very intelligent Secretary. Do we hold them personally responsible for that gross abuse of power? No, Sir. We esteem and respect them as much as ever. If they were to be held responsible, the slow and unerring finger of scorn would be pointed at them, and would follow them to the grave! But give to the Governor this power, and he will be held responsible for its exercise. What is there, so dear to a man as his character and reputation? And shall we suppose that the Governor of New Jersey will peril these for ever, by making appointments on personal and selfish grounds? And yet I was going to say that selfish, personal and political considerations only, have always controlled the Legislature.

But I am unwilling to believe that such considerations will influence the Executive. I am willing to meet my friend from Cumberland upon the issue he has made between the Legislature and the Governor. I will meet with confidence, because, after all, I have not so much faith in mere theories of government. They are often but the result of the labors and ingenuity of fine minds. I am almost prepared to say with the poet,

> "For forms of government, let fools contest;
> That which is best administered, is best."

There is at least as much truth as poetry in the saying.

But the gentleman says, that the people prefer the old mode of appointment. I do not know what may be the sentiments of the very intelligent citizens of Cumberland, but those in my own neighborhood, with whom I have conversed, are more unanimous upon this subject than any other. My own constituents of all classes—the intelligent and thinking men of all parties say, take the power of appointment from the Joint Meeting: and ever since my name has been mentioned in connection with a seat in this body, I have proclaimed openly, and from

the house tops, that I should raise my voice, however feeble, and exert my influence, however small, to strip the Joint Meeting of this power; and as far as I know, the people have said, "God speed you."

But what does experience teach us on this subject? Just what it was supposed it would 50 years ago. "Eumenes" has been frequently referred to—a book written by one whom all admit to have been a ripe scholar, a profound Jurist, and an accomplished gentleman—and every page of it says, strip the Joint meeting of this power—and he beautifully compared it to Pandora's box, the gift of all the Gods to man in which was every ill and not even hope behind! I have read too for months back, communications from some of the best minds in the State, and the loudest and longest complaints have been against this very thing. And if we shall leave these appointments with the Legislature, I shall feel that we have but half done our duty. I shall go away, not to vote against the constitution, but hanging down my head in sorrow, and looking forward to the time when the people shall elect representatives to another Convention, who shall more correctly hear their voice, and more faithfully execute their wishes. The experience of New Jersey on this subject has been just what might have been expected. "Eumenes" was written almost in the infancy of our government, and the very evils have occurred which its author anticipated.

They commence at the time when the canvass for the members of the Legislature commences, and do not end till the day when the decrees of the secret tribunal which has been alluded to are entered on the Journal. The evil is not confined to individuals, but it extends from one end of the State to the other.

I have been thrice a member of the Legislature, and I mean to give my experience on this subject.—The first time I was elected we were in a minority of 10, and of course we had nothing to do with the appointments, & had no right to have much to do with them. The next year I was one of a large minority. We were within three or four of a majority. What had we to do with the appointments? Nothing at all sir! It is a solemn truth that from the first day of the session to the last, we were never consulted about them, and had nothing more to do with them, than if we had remained at home! They were made by the other thirty five members! No sir, I am wrong. They were not made by them any more than by us. They were made by the caucus! A mere majority of them, *eighteen*, ruled the conclave—and the decisions of that august tribunal, like the laws of the Medes and Persians, never underwent a change! Is not that a monstrous abuse of power? These evils are not the result of accident, but are inseparable from

the system.

The third year, I had the misfortune, to be in a majority: and I have often said since, "if ever I am a member of the Legislature again while they have the appointing power heaven grant I may be in a minority!" I rejoiced at first, at the result. I fondly hoped we might carry out those principles which we had advocated, and which we believed would promote the interest and welfare of the people: and that continued till the first Joint meeting; but then I confess I was more mortified and disgusted at the scenes I witnessed than I ever was before. Is a Clerkship or Surrogate to be chosen? Every candidate is on the *qui vive*, and with the assistance of his friends loudly demands the nomination of those members who will favor his appointment. And when the member elected comes here, what scenes ensue! He does not come alone—His steps are dogged and he is hunted down by these candidates for office. The State is searched over to find men who have influence at Trenton—They are brought here—and from the beginning to the end of the session, scenes of *finesse* & management and intrigue are continually enacted, which poison the sources of legislation!

Then as to the caucus. It is not only the officers who are selected there—but laws are agreed upon. The majority of the caucus decides upon them—and thus little more than one fourth of the members of the Legislature pass laws, while a large majority are opposed to them!

But I will not enlarge upon these painful topics. It may be asked, are the people of New Jersey corrupt? No sir. The evils complained of are not so much the fault of the people, as the result of the system. I love the people of N. Jersey—with all their faults. I love them still—and I believe it is only because they are virtuous and intelligent, that this system has not exerted a more deadly and demoralizing influence upon them.

I am in favor of giving these appointments to the Governor,

First, Because it is an Executive power, and rightly belongs to him.

Secondly, Because there will be more responsibility with him, and

Thirdly, Because experience shows that to leave the power where it is, will and must lead to evils without number.

[6]Mr. Pickel replied in defense of the last legislature.

Mr. Naar said his preference was for giving all appointments to the people: but he supposed few agreed with him. He would therefore take the next most popular method; and that was the Governor.—He represents most nearly the whole people. And he would give the Senate a check upon him to prevent bad appointments.

Mr. Ryerson concurred fully in the arguments of the gentlemen from Camden, Middlesex, Mercer and Essex. He would only add that for the appointment of judicial officers especially, this was the best mode. He appealed to the high character of the U. S. Supreme Court, and of the Supreme Court of New York, for evidence of this. He added that in our joint meeting system appointments are often the fruit of bargain and corruption.

Mr. Zabriskie in reply to the objection that the governor and senate might disagree, said that sometimes the two houses had disagreed, and one or the other had refused to go into joint meeting.

Mr. Ogden was strongly in favor of the plan reported, and so far as he knew, the people unanimously desired it. The evil of the present system could not be denied. Let us provide a remedy; and this is the best.

[A]Mr. Ten Eyck said,

If he had the ability to address the Committee with the elegance and power with which gentlemen had already spoken on this subject, he should not attempt it; for he had no doubt that the minds of members were already made up—he would therefore claim the indulgence of the Committee for a few moments, whilst he gave the reason for his vote, so that those whom he represented might know the grounds on which it was given.

He said he was in favor of the amendment offered by the member from Morris, because he was opposed to taking the *whole* power of appointment away from the joint meeting, and that he believed the evil arising therefrom as heretofore exercised would be entirely removed by the other sections of the report, which propose to confer the power of electing the Clerks, Surrogates, &c, upon the people and to limit the number of Judges and Justices hereafter to be appointed.

He contended that the evils arising from joint meeting appointments resulted rather from the number of officers appointed than from their unfitness, but let that be as it may he insisted that these evils would be cured by the report of the Committee restricting the number of officers to be appointed.—He said, Mr. Chairman, I do not see that any particular mischief can arise from suffering the Justices of the Supreme Court and Chancellor to be appointed by the Legislature. Does any gentleman imagine that a Justice of our Supreme Court would be found visiting the several counties and interfering in the selection of candidates for the Legislature, in order to secure a seat on the bench? Do gentlemen suppose that a Chancellor could be found taking the same step to obtain a seat on the wool-sack? It is true, as

has been alleged, that persons desirous of obtaining a Clerkship or a Surrogacy may have exerted an improper influence and created political combinations in this respect; and candidates for the State Legislature may have been corruptly selected with a view to this end—but Mr. Chairman no such mischief can arise from the appointments now under consideration.

He said he was opposed to vesting all the power of appointments in the hands of the Governor, even with the concurrence of the Senate, for if the Senate should agree with him in party they would afford no check, and if, of the opposite party they would ingeniously impede it. Nor did he believe that an appointing power thus constituted would be less indulgent to corruption than the Legislature. He believed that the Governor would, although elected by the people, be but a man, and subject to like passions and infirmities with ourselves—that he did not see why the Governor would necessarily be always a man of integrity and free from corruption, while the Legislature were always to be subject to evil influences as had been roundly charged. He said he was but a young man and had not much experience in these matters, but he had observed the conduct of the executives of some of the neighboring States, who were invested with the appointing power—whose conduct had been far more objectionable in this particular than that of our Legislature had ever been, and such he believed would be the case with us; our Governor would be subject to party influence and intrigue.

He added that he was not afraid to say that he was so much of a democrat (and he claimed to have a title to that by *descent from his ancestors*) that he would never be willing to throw himself at the foot of the throne to obtain an office either for himself or for a friend, or obsequiously solicit aid from the power around the throne, or perhaps the power behind the throne, which though unseen might still be greater than the throne itself. He felt that such a power was not consistent with the spirit of our institutions. He did not like it. He said that the appointing power might belong to the executive, but he believed that what was sometimes right in theory was wrong in practice—that the most perfect *form* a government might be the least adapted to the *public good* and concluded by observing that he was supporting a measure which would not only be beneficial in its results, but one which his constituency freely approved of, that he believed he was only expressing their views and having done so he was content to stop, and detain the Committee no longer.

[C]Mr. Condit, had had some acquaintance with the proceedings of

the joint meetings, and had not found so much evil in them as had been portrayed. We propose to restrict very much the number of officers appointed by the joint meeting, and will thereby, remove almost all possibility of evil. The unequal representation of the population of the counties in the Senate, rendered it improper to give that body the power to control appointments. Four counties whose aggregate population was but 43,000 had four votes in the senate.—Three other counties with only 38,000 inhabitants had three votes in the Senate, and Essex with 45,000 votes, and Burlington and Monmouth each with 33,000 votes had each but one senator. Ten small counties with a population of about 120,000 could control nine counties with a population of 250,000. This inequality was too gross to be tolerated. Would the people of the large counties be satisfied with such a mode of appointments? And if the Senate should decide upon nominations by a political caucus, six Senators from the smallest counties might control the action of the whole body.

The governor will not be immaculate; and probably [A]with our new mode of choosing him [C]will not come up to the measure of our former governors. If he can be twisted and turned by ambitious demagogues, what safety have you in him? And the Senate will be no safer than they have been.

Mr. Wurts had hoped from the first meeting of this body that its labors would be directed to breaking down the corrupt influence of the joint meeting. He hoped they would be still.

It is true the plan of the committee is an innovation, but every change we have made is an innovation. And if there is one feature in the old system, which the people ask us to change, it is this. Until the meeting of this convention, I never heard one man express an opinion in favor of joint meeting appointments. The sentiment in Hunterdon is universal—Break down this appointing power—Take it away from the joint meeting.

Its influence is demoralizing and corrupting. It taints almost all legislation. Laws are passed in consequence of intrigues arising out of it. He had known names of members—many of the delegations of whole counties—hawked about the streets of Trenton to be bargained away for any candidate who would procure votes in return for a particular law.

If there were no other reason than the caucus mode of making appointments, that would be sufficient. You cannot break it up—public opinion with all its anathemas, cannot break it up, so long as the power of appointment remains in the joint meeting.

He could see no objection to the governor and Senate and should go for them with the most perfect pleasure.

Mr. Hornblower said he had seen men on the floor of the joint meeting, not members of the legislature and whom their own counties would not elect to the office of constable—he had seen such men on the floor of joint meeting behind the seats of members telling them how to vote. He would therefore vote for the report of the committee; but if the convention should insist upon their refusal to constitute the Senate on the basis of population, he reserved the right to vote against the report in convention.

[A]Mr. Ewing's amendment was disagreed to, without a count, [A]by a large majority.

[G]Mr. Pickel [Jaques, according to the Advertiser] moved to amend so that judges of the Common Pleas should be elected by the people.

This was advocated by Messrs. Jaques and Naar; opposed by Mr. Ogden, and disagreed to.

Mr. Ten Eyck moved to amend so as to give the appointment of judges of the Common Pleas to the joint meeting.

Mr. Ewing advocated this motion. He was almost in despair. He warned gentlemen who were making this rush against the joint meeting, that the deep foundations of our institutions cannot be broken up without creating a counter excitement.

Mr. Vanarsdale thought something was due to the opinions of gentlemen, and he would go for this as a compromise measure.

Mr. Vroom would not go for this as a compromise. He would give the nomination of justices of the peace to the governor, to be confirmed or rejected by the House of Assembly, if that would satisfy the other side.

The motion of Mr. Ten Eyck was not agreed to.

Mr. Sickler said he would offer as a compromise that the judges should be appointed by the board of freeholders. (Laughter) Not agreed to.

Mr. Jaques moved to amend so that the governor's nominations should be made to the Assembly, instead of the Senate. Not agreed to.

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

On motion of Mr. Child.

The convention adjourned till to-morrow morning, at nine o'clock.

[J]THURSDAY MORNING, 13th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Starr.

Mr. Spencer, from the Committee on Subjects not referred to other Committees, made the following report:

The committee to whom was referred the following resolution:

"*Resolved*, That so much thereof, as is not embraced in the foregoing resolutions, be referred to a committee to report thereon," beg leave to report—

I. *Preamble.*

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavours to secure and to transmit the same unimpaired to succeeding generations, do ordain and establish this constitution.

II. *Distribution of the Powers of Government.*

The powers of the government shall be divided into three distinct departments—the legislative, executive, and judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided for.

III. *Schedule.*

That no inconvenience may arise from the change in the constitution of this state, and in order to carry the same into complete operation, it is hereby ordained and declared, that—

1. All laws now in force in the state of New Jersey, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the legislature; and all writs, actions, prosecutions, contracts, claims, and rights of individuals and of bodies corporate, shall continue as if no change had taken place.

2. All officers now filling any office or appointment, shall continue in the exercise of the duties of their respective offices or appointments, for the term for which they have been commissioned or appointed, unless, by this constitution, it is otherwise ordained.

3. The present governor of this state shall continue in office until a successor, elected under this constitution, shall be sworn or affirmed into office.

4. In case of the death, resignation or disability of the present governor, then the person who may be vice-president of Council at the time of the adoption of this constitution shall continue in office, and

administer the government of this state, until a governor of this state shall have been elected and sworn or affirmed into office under this constitution.

5. The seal of the state shall be kept by the governor, and used by him officially, and shall be called the great seal of the State of New Jersey.

6. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the seal, signed by the governor, and countersigned by the secretary, and shall run thus: "The State of New Jersey to —— ——, greeting;" and all writs shall be in the name of the state; and all indictments shall conclude in the following manner, *viz:* "against the peace of this state, the government and dignity of the same."

7. Members of the legislature, and all officers commissioned by authority of this state, shall, before they enter on the duties of their respective offices, take and subscribe the following oath and 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 Jersey, and that I will faithfully discharge the duties of the office of ——, according to the best of my ability." And members elect of the Senate or General Assembly are hereby empowered to administer to each other the said oath or affirmation.

8. This constitution shall go into operation on the —— day of ——.

IV. *Provisional Articles.*

1. The secretary of state shall be ex officio an auditor of the accounts of the treasurer, and, as such, it shall be his duty to assist the legislature in the annual examination and settlement of his accounts.

2. All property in the state of New Jersey shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that the same shall be equal and uniform throughout the state. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value; *provided nevertheless*, the legislature shall have power to tax special privileges, in such manner as they may from time to time direct.

J. J. SPENCER,
R. LAIRD,
EPHRAIM MARSH,
WILLIAM STITES,
P. B. KENNEDY,
JNO. H. LAMBERT,
GEO. F. FORT.

Which was read, laid on the table, and,

On motion of Mr. Ten Eyck,

Three hundred copies were ordered to be printed.

Mr. Jaques submitted the following resolution:

Resolved, That the chairman of the following committees, *viz:* the Judicial, Legislative, Executive, Bill of Rights, Amendments, Right of Suffrage, Appointing Power, and Subjects not referred to other committees, be now constituted a committee to arrange and unite the several reports, as acted upon by the committee of the whole, and present them, in a connected form, for the consideration of the convention.

[G]Mr. Randolph moved to substitute a resolution for a select committee to whom the reports should be referred as soon as agreed upon.

Mr. Wurts moved to lay the subject on the table. Agreed to.

[J]On motion of Mr. Child,

The convention resolved itself into committee of the whole, Mr. Parsons in the chair, upon the consideration of the unfinished business of yesterday, being the report of the Committee on the Appointing Power and Tenure of Office.

[G]Mr. Sickler moved to strike out prosecutors of the pleas from the list of officers appointed by the governor and senate. He said his object was hereafter to insert the prosecutors among those officers to be elected by the people.

[A]Mr. Allen advocated the motion, and would like the Judges of that Court [Common Pleas] to be also elected by the people. Mr. A. regretted the remarks made yesterday with respect to Joint meeting. He did not believe in the corruption and demoralizing effects attributed. He believed the members were as honest as the Legislators in any other State, and he thought the aspersions highly improper, and unjustifiable. He believed there was more corruption with reference to passing acts than in appointments, and he thought the adoption of the two-third rule would raise a corrupting influence, as now few things could pass on their own merits, and this corrupting influence would be brought to bear to effect their passage not on their merits. He asked gentlemen to name this corrupt influence of which so much had been said. He had been a member of the Joint Meeting in a majority and minority, and he had never been improperly approached upon the subject of any appointments. Under the present mode of appointment the qualifications of candidates could not be ascertained by the Governor but he must rely on the dictum of the central junto in Trenton, or the representations of members from the county, and appointments would be made on improper grounds. The appointment of a County

Judge would be a responsible and honorable office, and whether vested in the Governor or Joint Meeting, they would be appointed solely with reference to their qualifications. He was in favor of giving the appointment of prosecutor to the Joint Meeting.

Mr. Ryerson would go for striking out, but for the purpose of giving the appointment of prosecutors to the Judges of the Oyer and Terminer,—who would be the most competent judges of their qualifications.

Mr. Childs was in favor of giving this appointment to the people. He wished to take as much of the appointing power from Trenton as could be done with safety.

Mr. Parker thought if there was any officer to be appointed as provided for in the section, it ought to be the Prosecutors of the Pleas. He was opposed to giving it to the Court, and though he was willing to go far for the people, yet to give this to the people would raise a contest, and a Prosecutor might be placed in an awkward predicament if some friend who had been most zealous to secure his election should be indicted, and he should have to prosecute him. He could not do his duty with that justice and impartiality which would be expected of him.

Mr. Ewing defended the joint meeting. As to the corruption of the lobby members, he had no doubt there was abundance of that, but he denied that it existed among the members. He could bring the testimony of gentlemen who had been here as representatives for eight and twenty years, that they never heard of such corruption. The Governor had always been the most independent. The Judges of the Supreme Court, distinguished for their talents and learning, and it was strange if such corruption had existed, that such appointments had been made. He admitted that with reference to Justices of the Peace, political considerations had entered into their appointments, and he was glad that the people for the future were to have these appointments under their control. He was willing to concede the higher appointments to the Governor and Senate, but when they came to county officers, they should be given to the joint meeting or the people. As to county Judges, he objected to have them appointed by the people, and he feared if that were the case, the question of temperance and granting licenses would create a very serious division—These appointments he was in favor of giving to the joint meeting. The appointing power as now proposed was a one man power, partaking of an aristocracy and monarchy, and he should ever oppose it.

I object, Mr. President, to the mode of appointment, vesting all

power of nomination in the Governor, as inconsistent with the principles of our free institutions, and an innovation upon long established practice for which the people are not prepared. The patriotic and intelligent framers of our Constitution well understood this matter. They had witnessed the appointments made by his majesty's colonial governors, by and with the consent of his council, as well adapted to carry out the plans of royalty, and to continue and perpetuate British influence in the colony. They were pure republicans, and placed the appointing power where it ought to be, under the control of the immediate representatives of the people, who, being annually elected, were answerable to their constituents, and could be called to a strict account for an abuse of the trust reposed in them; and coming from the respective counties, were supposed to be well acquainted with the character and claims of their fellow citizens to the honors and emoluments that were to be conferred throughout the state. They had evidence before them that governors were not always to be trusted, as they were, at that moment, in open hostility with Governor Franklin, his majesty's representative. The power of appointment by one man has been in this Convention very appropriately called a "one man power;" and when that individual is elected for three years, and then is ineligible, he is, in a measure, above restraint. As the times are, he must be a political partizan; and in case a majority of the senate are of the same politics, the appointments will be of the same complexion. The bitterness of party will be aggravated, and whatever may be the change in public sentiment, there will be no relief until his term of office expires. In case the governor and senate are opposed in sentiment, no appointment, perhaps, can be made, the laws will be nullified, and the interests of the state will suffer for want of officers to execute their proper duties. In case the political parties in the senate are divided, which most assuredly will be the case, ten members of the senate, perhaps from the ten eastern, or perhaps it may be the ten western counties will make all the appointments throughout the state, thus fastening upon us, in effect, a caucus system with a vengeance. The abuse of the appointing power by the joint meeting has, by the restraints about to be made by this convention, in a great measure been corrected; the members cannot appoint themselves to office; the election of justices of the peace has been given to the town meetings, and of the clerks and surrogates to the people of the counties; surely therefore, they may be trusted. If the joint meetings are so corrupt as has been represented, how is it that the appointments made by them for a long series of years, have been so superior, and acceptable to the people. We have had, at all times, the most able governors, the

most competent justices of the supreme court, and all our incumbents have been superior to those of the neighboring states. If the tree is known by its fruits then may we confidently pronounce that the evils of joint meeting appointments have been but temporary and accidental, and ought not to destroy the confidence the people have hitherto reposed in its exercise in honest times. By making the governor thus omnipotent, the people and their representatives will be thrown into the background. All the energies, all the strife, will, in future, be absorbed by the gubernatorial elections as at present in Pennsylvania. The governor will receive his support from political agitators, and these and their dependents will be the recipients of his appointments. The governor will be selected by a clique, the farmers, the mechanics, the whole mass of operatives will be entirely neglected, and a system of iniquity will be placed as a yoke upon their necks, from which they cannot easily extricate themselves.

Mr. Hornblower should oppose striking out until some better plan was proposed. It was a great mistake to suppose this an unimportant office. If indictments are found but never tried, something must be wrong. If they are found and so badly drawn that they fail half the time there must be something wrong. If courts are obliged to turn prosecutors or permit prisoners to escape there is something wrong. In this office, public interest, economy & justice are involved. Prosecutions are carried on where they ought not to be, or omitted where they ought to be under the advice of this officer. The office is created for the public good, and should be filled with competent men on whom the public could rely, and the appointment should be made in such a manner as to secure such an officer. When he first came to the Bar, they were appointed by the Attorney General, they were his deputies, and there was no complaint as he heard. Then it was taken from him and was given to the justices of the Sessions, and then afterward to the Joint meeting.

Mr. Zabriskie referred feelingly to the mode of argument adopted by Mr. Ewing, and deprecated everything like personal imputations.

Mr. R. S. Kennedy was opposed to striking out, until he knew whose hands they were going to fall into. The gentleman who moved to strike out has told us he intended to move their appointment by the people of these counties. There is certainly some strong reasons why the Prosecutors of the Pleas should be elected by the People. These Prosecutors are generally a very rigid set of fellows; they want a man to live according to Elmer, whether he wants to or not. And there are a great many *very respectable people* in all our counties, who think

that in this free country every man has a right to do as he pleases—they think they have a right to gamble, or to steal, whenever they choose. And they are sometimes very much disturbed by these meddling Prosecutors. Now these men are deeply interested in the appointment of a Prosecutor, their rights and liberties are concerned in the matter, and they claim the right to have a voice in their appointment, especially in the reappointment of one who has used them rather roughly; besides by the aristocratic rules of society, they are effectually excluded from any of those cliques, which, it is said, will control the Governor in his appointments. And if they do not get their rights by a vote of the people, they are debarred from any voice in the appointment of an officer, in which it must be confessed they are more interested than any other class. But strong as the arguments are in favor of giving the appointment to the people, I am not sure it will go there; therefore I am opposed to striking out.

Mr. Naar was in favor of striking out, and putting it in the 7th section. The term corruption had been freely used on all sides, but he thought the influence brought to bear on the Joint Meeting was from the people who were endeavoring to assert their rights. But it was [not] that portion of the people whom he wished to see here. It was those who could afford to come here and spend their time, or who were paid for coming here. Such was not the influence he wanted to see, but if it was given to the people, all classes, interested and disinterested would, as they should, have a voice in the appointment. The only safe power they would find was in the Ballot Box. We had distrusted the people so long, that they had begun to distrust themselves, but they were after all the safest depositories of this power. He referred to the Freeholders, Assessors, and Collectors, and asked if they were not always good and satisfactory? and if the people erred, they erred in their own wrong, and would soon right themselves. Take this power from the people, and you give it to a power which may be corrupted.

Mr. Schenck was willing to state all he knew with regard to corruptions—as for himself, he never had pending the election any proposition made to him direct or indirect to support any man. He had after the election received letters, but nothing corrupting or demoralizing, but simply asking his support for a candidate so far as he could give it consistently. In caucus they were pledged to go for the names presented and that left an opportunity for intrigue and that he was willing to acknowledge.

In the distribution of the powers of government this was an officer appointed to execute the laws, & should properly be appointed by the

chief Executive, the Governor, but he was willing the Senate should have a check upon him. The Attorney General is appointed by the Governor, but give this office of prosecution to the people, and these offices will come in conflict. A prosecutor would with more impartiality and a stronger sense of duty discharge his duties, if appointed as provided for in this section.

Mr. Wurts denied the right of gentlemen to take him to task for the expression of his opinions, except he attacked them personally. He had not said that any member had given his vote for corrupt motives—but he did say that the Joint meeting system had a tendency to corrupt Legislation. He did not charge any gentleman with corruption; he alluded only to the corrupting tendency of having the appointing power so vested. The question was on the change of the appointing power, and because some gentlemen did not favor the Joint meeting, they were charged with entering into combination to break it down. He should be glad if it could be broken up, for he considered it a great evil, but he denied that any member had entered a combination for that purpose. Gentlemen united in their opposition to the joint meeting because they doubtless thought it wrong. But the gentleman (Mr. Ewing) had gone too far. He aspersed the Governor whom the people were to elect. He aspersed the Senators who would be elected, in advance, not in their Legislative capacity, but only when they met to pass on appointments, and then he characterized them as a star chamber inquisition. He could not see why the character of this body should so change merely in passing on, or rather confirming nominations.

Mr. Allen rose merely to say that he thought the whole course of debate yesterday and today was improper and uncalled for. He advocated the appointment of prosecutors by Joint meeting, as the qualifications of candidates would be best got at in this mode.

Mr. Pickel was in favor of giving the appointment of these officers to the people, as a matter of right and justice. Members said they were not afraid to trust the people, yet when it came to the point they did not do it. He would like to see the faith of gentlemen exemplified by their works. The people had a right to this appointment and he hoped members would give it to them. He was opposed to Joint meetings, as there favoritism was too often exercised.

Mr. Marsh was in favor of having this appointment made in joint meeting. He did not agree that the complaint was so much as to the quality of the appointments made in joint meeting as to the quantity—the great number of offices filled. There had in fact been no limit to them and appointments had been made exceedingly objectionable to

the people. If this was to be continued by the Joint meeting, he would denounce it, but by the provision agreed to, the number of officers was limited, perhaps not over 25 officers to be appointed during the year, instead of 900 as had been made. Would these few appointments have the corrupt and demoralizing tendency which had been so much talked of? He had no fear of this at all, and was not willing to subscribe to all the doctrines advanced here, great indiscretions no doubt had been committed, but he would not accede to the charge of corruption so freely made. The results of these Joint meetings had certainly not been so disastrous to the State.

But nothing had been said of the evils which might grow out of the other mode of appointment. That power might be abused, and instances were not wanting in other states, that it had been abused. This it was proper to look at. They could not shut their eyes to it. The Governor had to be elected by the people it was true, but was he *selected* by them? Would not a small body of men come up here and nominate a man, and the majority of the people would confirm it by electing him. He of course would know who secured his nomination, and is it not to be supposed that an influence would be exerted over him in controlling appointments quite as dangerous as that which may be exercised over Joint Meetings?

Mr. Field followed, and explained more fully, in reference to certain allusions in the debate, the true ground of his objection to the caucus and joint meeting system, the tendency of which was decidedly bad. But he had never charged corruption—never said the members were corrupt. He repelled, also the intimation of a combination here on this question. He then proceeded to shew how the election for the Legislature was influenced by intrigues for the offices in its gift. This appointing power also interfered materially with proper legislative business, and was altogether the most expensive system ever adopted.

Mr. P. B. Kennedy was in favor of the motion to strike out, but was not in favor of giving the appointment to the joint meeting.

Mr. Child reminded members that they had consumed two hours and three quarters upon this subject, and if they went on at this rate, when did they expect to finish their labors? He considered that they had important duties to perform, and unless gentlemen would confine themselves to the subject under discussion, they never could get through. He had supposed that in the Committee of the Whole it would be more like a conversational meeting, where a gentleman would give his views in two or three minutes, but he had been compelled to sit under the infliction of speeches from 35 to 40 minutes long.

Mr. R. S. Kennedy was opposed to giving the appointing power to the joint meeting; he was heartily sick of party legislation, and a party legislature. For the last 15 years we have had annual efforts by both political parties to carry a majority of the Legislature. And why was it considered a matter of so much importance? Because the majority controlled the appointing power. I desire, Sir, to see this patronage taken entirely from the Legislature. Then what motive will be left for either party to strive for a majority? Then may we expect a return of the good old times when the best men were elected, without regard to party. Then may we expect our citizens to go to the polls and select such men as they think are qualified without the dictation of a caucus. Why is it that a Democrat cannot be elected in Essex? Is it because the Democrats have no men qualified? No, Sir; it is because the Whigs wish to exercise the appointing power, and every vote is necessary; and for the same reason no Whig can be elected in Hunterdon, Warren or Sussex. I have seen this anxiety to obtain a majority overturn all other considerations. I have seen in my own county at a caucus of the dominant party, by the management of intriguing politicians, men selected who were unpopular and unworthy. And I have heard the manly bursts of disapprobation of their own political friends. But their murmurings were soon hushed by some political leader who would declare that it was necessary to stick to the ticket, to prevent a Whig from being elected.

Mr. Chairman, I desire to put an end to the intrigues of caucus, both at home and here, and I believe that if you take from the Legislature this patronage, you will most effectually do it. But I wish also to restore peace and quietness to those counties where a political war has so long raged. The gentleman from Salem, when opposing annual elections eloquently depicted the political rancour of those contests. He said they were tired—that they wanted some rest. Sir, if you strip the Legislature of this patronage, they may *rest*—there will be no motive for this continued war. The counties of Morris, Somerset, Cumberland, Salem and others will sheath their swords, and we will have rest, not only at home, but *here*. A different feeling will be exhibited here. If there is no appointing power to divide the Legislature, then may we expect to see our legislators exhibiting the spirit, which is manifest here, and men will be willing to legislate for the whole state, and for the good of the whole.

Another evil which I wish to remedy is *party legislation*. What causes party legislation? It is always done with an eye to legislative patronage. The party legislation of the last Legislature, I believe is disapproved of by every gentleman in this Convention, (with the exception of the gentleman from Hunterdon, who feels a little sore on that subject). But what was the cause of it? It was intended to perpetuate legislative patronage. The party in the majority had been out of power for six years; they had now obtained the object of their desires; they had tasted of the sweets of legislative patronage, and they had no idea of relinquishing it. They therefore made new counties and altered townships, not because the people desired it, but because it was intended to continue the appointing power in their own hands. But if we take this appointing power from the Legislature, there will be no need of putting checks in the Constitution to prevent future Legislatures from altering county and township lines; there will be no motive for doing it. And there will be no danger of another legislature risking the odium which the last Legislature has incurred, when there is nothing to be made by it. In every view of it I think it would be better to strip the Legislature of all patronage whatever.

Mr. Jaques spoke at some length in favor of giving the appointing power to the people.

Mr. Ogden, If the motion to strike out "prosecutors of the pleas" prevails, it will be proposed, as already suggested, to vest their appointments in the people. Sir, I do not distrust the capacity or integrity of the *people;* and so far as I am individually concerned, I should be willing upon a vacancy, to submit my claims to that office to the voters of my county. But the question should be considered in all its aspects. We do not fully meet the case by determining upon the capacity of the electors of counties to make acceptable appointments; but we should also examine the position of the incumbent. The prosecutor is a high and important officer. His duty is to ferret out and detect and bring criminals to punishment. It will be admitted that independence in action is equally important in the executive as in the judicial department of government; and if crime should be suspected in high places, and public justice should demand that individuals, who perchance may hold controlling influences over elections, and with whom the current of public sentiment may at the time be setting, should be dealt with according to law, might not a prosecutor, whose term of office was on the wane, feel less independent and free to act out his part in view of a popular election so deeply affecting him, than if the power of his re-appointment was vested in a more remote depository? I shall vote against the motion.

Mr. Lambert was willing to strike out, but not without fixing definitely where the power should be vested; and he would go in favor of joint meetings, for so far as he knew the will of his constituents,

they were not in favor of breaking this up. He remarked that the gentleman from Warren (R. S. Kennedy) and others, had talked much of corruption, but he had never detected or discovered it; and while on this subject he thought he might as well state that the first time he ever saw or had the honor of an introduction to his friend from Warren, (Mr. Kennedy) was when he was present here as a lobby member trying to arrange a township line in Warren County.

Mr. Zabriskie, as a member of the Committee, said that the report had been framed with an especial view to placing the responsibility where it should be, and before there was none at all.

Mr. Cattell advocated the vesting of the power in the joint meeting. The giving it to the Senate was only removing it another step from the people.

Gov. Williamson. There is a question involved in this discussion of vast importance in the discharge of our duties. In the formation of our constitution, it is always a question of difficulty, where the appointing power should be placed, and the question here has arisen whether it should be continued to the joint meeting. In deciding it, it is of great importance to consider, 1st, where the power naturally belongs. That we ought never to lose sight of. It is agreed on, I believe by all writers on this subject, and especially by those of our own country who have given their sentiments upon this matter, Jefferson, Madison, Adams and Hamilton, that in the formation of a government like that under which we live, that the power ought to be divided among these departments—the legislative, judicial and executive,—and that each one ought to be separate and distinct, and I take this occasion to express my pleasure, that this principle is declared in the report which was made this morning.

The appointing power belongs naturally to the executive and not to the legislative department, for it is foreign to their duties. If we take this power from the executive where it naturally belongs, where ought it to be placed? It certainly should not be taken without strong reasons. Are there any reasons why it should be taken from the governor? He is immediately elected by the people. He is their immediate representative—It is supposed that he will execute his duties fairly, and if you are going to make the office a respectable one, do not strip it of all power. I can see no reason for distrusting the executive, nor do I see any reason for taking this power from him and giving it to the joint meeting or to the people. If we strike out as moved by Mr. Sickler where shall the power be placed? Either in the joint-meeting or in the people. But, sir, I am opposed to both.

In the first place, I am opposed to giving it to the joint-meeting, because it is foreign to their duties and powers. Then it has, in my opinion, an injurious effect upon the formation of the legislature. Were we to give the power to this body, there always would be aspirants to office, and we should find their influence in the primary assemblages of the people. If an attorney is to be appointed, those who want the office go to work with their friends, and these appoint men to attend the convention to nominate members for the legislature. Thus it commences in the primary assemblages, and in the convention it produces combinations and bargains. Nor does it stop there. It follows the members here, and they are beset by aspirants for office and by their friends, urging every thing they can conceive of, to obtain their wishes. I impute no corruption, sir, to the legislature, nor do I apply my remarks to any one party or the other; but I ask, is not this the natural consequence, and has it not a pernicious effect?

As to joint-meeting, the manner in which this power has been exercised has been stated, and has not been denied. In fact, the joint meeting has nothing whatever to do with the appointment at all. The same party which decides in caucus decides in joint-meeting. The voice of the minority is never heard, or if heard, is never regarded. Do we wish to have appointments made in this way? Does any reasonable, any reflecting man wish it? My objection therefore is to taking this power from where it naturally belongs, and placing it where it must lead to injurious consequences.

The question was then taken on the motion to strike out, and it was lost, ayes 22, noes 28.

Mr. Sickler stated that he had made the motion in obedience to instructions from his constituents but had opposed and voted against it.

Mr. Randolph moved to strike out the words "Clerks of the Supreme Court, and Court of Chancery," and he advocated his motion at some length, contending that it would be wise to divide and distribute the appointing power as much as could be done with safety to the public good, and he thought that these Clerks should be appointed by their respective Courts, who would have the best opportunity of judging of the qualifications and fitness of candidates, and who would appoint none but qualified and responsible men.

This was not agreed to ayes 13, noes 21.

A motion that the Committee rise was lost.

Mr. Jaques moved to strike out Secretary of State, and he did so he said with the view of having that officer elected with the Governor and for the same term—Not agreed to ayes 21, noes 21, the chair

(Mr. Parsons) voting in the negative.

Mr. Vroom. Mr. Chairman, before the next section is reached, I wish to offer an amendment on a different ground from any heretofore taken, and I renew the motion to strike out "Prosecutors of the Pleas," for the purpose of moving also that these officers be appointed by the Attorney General, or that the Attorney General have the power to appoint as many deputies as he may see fit or necessary. This will be taking some of the power proposed to be vested in the Governor and Senate, and I think it will be disposing of it better than by vesting it in the Joint Meeting or in the people. The Attorney General is an officer whom we must have. The office is provided for by the Constitution. He is the law officer of the State, the prosecuting officer in every County throughout the State, and he ought to be a man who would rank with the first at the bar—a man who would feel his responsibility. I object to putting this officer on a rank with the prosecutors of the pleas, as has been the result of the system of appointment now prevailing. The Attorney General would have power throughout the State, and where he could [not] attend to the duties of prosecuting officer himself, he would see that they were performed. The responsibility would rest on him, and if an incompetent prosecutor should be appointed he would soon know it, and remove him.

Before it was found expedient to break up this system, we had an Attorney General who was looked upon as a superior man, as a man at the head of his profession, and he ought to stand there; for in the prosecution of criminal cases throughout the State he would come in conflict with the very flower of the bar, and he should be a man who could cope with them. He either appointed his Deputies, or the Courts of Oyer and Terminer appointed them. When the State was small, the Attorney General went into most of the counties and attended the Oyer and Terminer himself, and in many counties where important business was to be transacted, if he did not attend or appoint Deputies, the Court did it for him. This worked very well until the necessity for easing it up, and then it was given to the Judges of the Quarter Sessions in 1812, and what was the effect of this? Why, sir, there was just such another scramble as we see when tavern licenses are to be given out. Every Justice of the Peace in the county was brought out to vote, whether he had ever attended the Court or not, and I have seen the bench crowded with Justices on those occasions. In three or four years this was done away with, and the appointing power was thrown into that *omnium gatherum*, the Joint Meeting, and there it remains. It was thrown into that vortex, and there it has been ever since, and now

we have a Prosecutor of the Pleas in every county in the State. Now, when the Attorney General goes into a county, the Prosecutor must stand back. This is an ungracious task for him to perform, for he is ruled by the same appointing power, and he is loath to tell the Prosecutor to stand aside. I have heard of such things as a compromise between the Attorney General and the Prosecutor with regard to the fees of the office. The office has hitherto been confined to Counsellors, but an effort has been made to get it down to Attorneys, and a man who could not get up in the Supreme Court and make a motion, was actually thought competent to act as a public Prosecutor. I wish, sir, to restore this office to its pristine dignity. I wish to make it what it was before, and by giving this appointment to the Governor and Senate, I hope to accomplish it. I do not want the Attorney General to come in conflict with the county offices, and the best way to avoid this will be, in my opinion, to give him the power to appoint his own deputies. We should then have a responsible man, and if any Prosecutor should fail in the performance of his duties, the people would look to the Attorney General to displace him. It would be his duty, and he would have the authority to do so at once. This, sir, is the plan which I would propose, and with these views, having in view only the good of the State, I submit it to the Convention, and make this motion, to strike out the words "Prosecutors of the Pleas" in the first line, and insert at the end of the clause, "The Attorney General may appoint as many Deputies as he may think necessary."

[G]Mr. V. advocated his motion with great ability; after which [J]the committee rose, reported progress, and had leave to sit again.

On motion of Mr. Mickle,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

On motion of Mr. Wills,

The convention resolved itself into committee of the whole, Mr. Parsons in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on the Appointing Power and Tenure of Office.

[G]The section under consideration when the committee rose was postponed for the present.

[A]Mr. Browning offered an amendment [to Section 5] that city officers (Mayors, Aldermen &c) shall have no civil Judicial power. He

said their proper authority was criminal only—a police jurisdiction—and as it is now, the number of justices will be greatly increased in cities and boroughs.

Mr. Naar inquired if it would not affect charters now in existence? In Elizabethtown these officers constitute a Court of Common Pleas and Quarter Sessions.

Mr. Allen thought it would strike at a great principle in all these charters. All their actions, to collect taxes, regulate the streets &c are civil actions, and he thought it would produce great confusion and difficulty.

Mr. Hornblower did not wish to interfere with existing charters, but he was opposed to making persons who are merely elected as Aldermen, *ex officio*, Justices of the Peace. It is an intermingling of Jurisdictions and he had opposed it in the Charter of Newark, when instead of this, Police Justices were appointed.

Mr. Halsted thought the amendment would go farther. It is one question to prevent Aldermen from being Justices, but quite another, to disturb existing charters—and he was opposed to the amendment for this latter reason. It would interfere with the charter of Newark, which now provides for a City Court.

Mr. Wood hoped the whole section would be stricken out.

Mr. Browning thought his object was misunderstood. It was not to interfere with those who at present are exercising civil power, but to interfere with the practice of the Legislature in conferring this power hereafter—and to prevent any such power being granted after the commissions of the present ones shall expire. After some further conversation between Messrs. Allen, Browning and Hornblower,

Mr. Browning withdrew his amendment to give Mr. Wood an opportunity to move to strike the whole section out.

Mr. Naar and Mr. Dickerson hoped the motion would not prevail, as we provide in the Constitution for all other officers.

Mr. Hornblower said these officers are provided for by law already, and by the report presented this morning, all corporate rights shall continue unchanged.

Motion agreed to.

Mr. Vroom's motion, to give the Attorney General the power to appoint Prosecutors, was taken up.

Mr. Hornblower seconded the motion with great pleasure. The office of Attorney General has become degraded to a mere money catching business and he must make his living by appearing at the Quarter Sessions to prosecute indictments for selling liquor—for assaults and batteries, for keeping disorderly houses. I have no selfish or partizan feelings. At my time of life I cannot ever expect to be Attorney General of N. J. or to fill any other office long. In good old times, the Attorney General was one of the most important officers of the State—He appeared at the bar of the Supreme Court in cases of *quo warranto* & other important State matters, but he is now reduced to be a mere Prosecutor in the different Counties. The Prosecutors as they are now appointed are sometimes not men of that discretion which they should be. It is not every flippant or even talented young lawyer that should be appointed Prosecutor but men of great *discretion* also, were wanted. He had not the slightest allusion to any particular persons or times but he thought that better officers would be secured, if we give them to the Attorney General.

Mr. Condit did not know whether any better appointments were formerly made, when the Attorney General appointed them than have since been made. He did not wish however that unnecessary odium should be cast upon the Joint meeting. It was only at the request of the then Governor that the appointment of Surrogates which he then had, was given to the Joint meeting.

Mr. Vroom knew that, but the reason was, that the office of Surrogate had got to be too strong for him. The question was, not who should be the Governor, but who should be Surrogate—and he was very glad to get rid of it. So it was with the clerk in chancery. That became too strong for the Governor, and he got rid of it.

Mr. Condit, I only stated the fact, sir.

Mr. Vroom, and I only the reason!

Mr. Browning said this subject was considered by the Committee who made the report, and he was one of a minority who were in favor of this mode of appointment, *first*, because it would add dignity and character to the Attorney General—and *secondly*, that it would distribute farther the patronage of these offices, and *thirdly* that the Attorney General is the most competent person to make these appointments.

The office of Governor, it is not probable will be filled by a lawyer. But the Attorney General and these Prosecutors must be lawyers—and he is therefore more competent than the Governor, to judge of the ability and standing and discretion of the persons to be appointed.

Mr. Randolph had been in favor of this amendment when it was proposed, and the argument of the mover this morning had confirmed him in that impression. But he had now some doubts on the

subject unless some modifications were made.

The Attorney General should be the great law officer of the State. He should not be a mere Prosecutor. He should reside at the seat of government at least during the session of the Legislature, to advise them when necessary. But if he is a mere Prosecutor will he go through the Counties, and say to the young Attorney, what share of the fees will you give? I do not say he will, but that there will be a temptation to do so. If you make the Attorney the great law officer of the State and give him a compensation for his services instead of fees as a prosecutor, I should be willing to go for the amendment. But as it is now, he may appoint the prosecutors with reference to their talents and discretion, or upon very different considerations. I am willing he shall have the power, if he is made what he should be.

Mr. Hornblower said that we did not use to have prosecutors appointed upon such grounds, when we had a Woodruff for Attorney General, or under his successors until the appointment was given to the Joint meeting.

Mr. Allen was opposed to the amendment. The Attorney General cannot attend to his duties in all the Counties, and he will therefore farm it out—He will be like other men—will take the office for the emoluments and will not appoint Prosecutors for their integrity or fitness; but from party or pecuniary motives. It is not right to incorporate into the Constitution a provision which will enable the Attorney General to farm out these offices. The Governor cannot possibly derive any pecuniary advantage but will appoint them from disinterested motives and for the public good—while the Attorney General will be governed by selfish and personal interests.

Mr. Naar said this would only give the Attorney General directly the power which he now has indirectly. He may now go to each county and supersede the Prosecutor—and beside the Prosecutor will not know whether or not the Attorney General is coming into the County nor whether to prepare himself for the trials which are coming on or not.

Mr. Vroom had a few words to say in answer to the gentlemen from Middlesex and Burlington who seem to think that the Attorney General in making these appointments will be influenced by selfish and mercenary motives. But does not the present system lead to these bargains? The Attorney General may go to the different counties and supersede the Prosecutor. The latter will say, "but I have drawn these bills and arranged matters to try them." The Attorney General will answer, "no matter, you must stand back. I am the Attorney General."

—Well, the Prosecutor will find that this won't do, and will it not lead to this very bargaining?

But the plan which I propose looks above such considerations. In the days when we had a Frelinghuysen or Woodruff for Attorney General, who would think of farming out these offices? Nobody. It would have been considered an impeachable offence. The idea would never have been entertained, & I was surprised to hear the gentleman from Burlington say, that he had no doubt such would be the case now. I can only say, as a member of the profession, that no man who had any respect for himself or who was fit for the office, would think of such a thing. He would feel himself degraded by it.—But it is said that the Attorney General cannot do all his business. Neither can the Sheriff his. But let him appoint his own deputy. He alone will be responsible and the people will look to him that the duty be well performed.

The gentleman from Middlesex advanced one idea that is worthy of attention. He says that if the Attorney General was the mere advising officer of the government he would consent to the amendment, but not otherwise. But if you do that you must give him a salary; and besides that is the very reason why I would give him this power, because he is the prosecuting criminal officer, and it is his duty to see that the business is well done.

If the Convention shall adopt my amendment, I shall feel gratified —but if the majority think otherwise, I shall cheerfully submit.

Mr. Hornblower further advocated the amendment.

Mr. Stites inquired if the Prosecutors were to hold their office at the will of the Attorney General?

Mr. Vroom. Yes Sir.

The amendment was agreed to, [G]22 to 16.

[A]Mr. Wood offered an amendment "that when the Senate refused to confirm the Governor's nominations, the Joint meeting shall forthwith make the appointment."

Mr. Ogden opposed it.

Not agreed to.

Mr. Wood called attention to the section giving the election of Surrogates to the people. He had been a long time Surrogate of Morris, though he never expected to be again, and therefore had no improper motives. But he would say that the office was a most important one. All the property in the State passes through the Orphans' Court in a few years, and as a general rule, the Court takes the accounts of the Surrogate as correct, unless objections are made. He did not know but the people would elect as good men as would be appointed otherwise,

but the office is as important perhaps as that of a Judge of the Supreme Court or a Chancellor, and the subject should be well considered.

Mr. Condit moved to strike out "and Surrogates."

Mr. Ryerson hoped their election would be left to the people.

Mr. Field inquired where he (Mr. C.) would vest their appointment?

Mr. Condit would leave that to be filled up afterward. He should prefer himself, the Joint meeting as the Senate is constituted, but had rather give it to the Governor and Senate, than the people.

Motion not agreed to, [G]15 to 29.

[A]Mr. Ryerson offered an amendment giving the election of Commissioners to take the acknowledgements of deeds to the people.

Messrs. Wurts, Browning & Ewing suggested that they were unnecessary officers, and the power would probably be given by the Legislature to Justices, if their number was limited. Mr. R. withdrew it.

[G]On motion of Mr. Ogden, the 9th section, providing for the election of constables and freeholders by the people, was stricken out, as unnecessary.

[A]Mr. Mickle moved to strike out the clause allowing each person to vote only for a majority, (or when two only are to be elected, for *one*) of the Justices in each township. He wanted every body to be allowed to vote for all if any.

[G]The motion was advocated by [Mr.] Ewing.

[A]Mr. Browning hoped the motion would not prevail. The plan seemed to be sanctioned when the Judiciary report was under consideration, and I think it will be productive of a great deal of good. I need not allude to the importance of the office of Justice. Besides being conservators of the peace, they have jurisdiction of all civil matters under $100—and the amount of property adjudicated upon in this Court, is greater than in any other; and the suitors are fifty to one. He should then have the confidence of the people generally: and this article will have the effect of giving to the minority as well as the majority a Judge in whom they may confide. It will also prevent the necessity of resorting to candidates who are merely available from their personal popularity, in districts where parties are nearly balanced. It will also not only enable but make it incumbent on both parties to select their best men—else the Justice of the opposite party will get the business.

It is in vain to shut our eyes to the existing state of things. There are and will be parties. There never was, and never will be a republic where liberty is regarded, and watched with vigilance where parties will

not exist. It is incident to all republics founded on proper principles.

It is our duty to frame a Constitution to conform with what is and will continue to be, the existing state of things in our Government. Again, this is an equitable provision, and it will therefore satisfy the people, for they are always satisfied with what is equitable and just. It will prevent too, a mere party magistracy, and will give every suitor a choice of courts where he shall prosecute. I submit therefore whether in equity and justice this provision ought not to be retained.

Mr. Mickle had no idea of beginning at the bottom of the ladder. You had better divide the Judges of the Court of Common Pleas. Yes, and of the Supreme Court. I never ask myself whether a Justice is a Democrat, Tiger or Coon! Let's begin higher up, if it's necessary at all!

Mr. Dickerson hoped the article would be struck out. He thought it would be impracticable and that the majority ought to rule.

Mr. Ryerson thought the people would not understand it. He would suggest that it should read "where two are to be elected one shall be a Democrat and the other a Whig!"

Mr. Marsh hoped the article would be retained. As far as he had heard it had given very great satisfaction to the people, as great perhaps as any other.

Mr. Hornblower thought it would be undignified to make a Constitution with reference to parties; and he did not want our posterity to inquire why it was necessary for us to engraft this provision in our Constitution, and to have to learn from history that in the 19th century, there was a violent political agitation, and that we had to make a treaty of peace and satisfy the belligerent parties, by adopting this compromise! They will not be the officers of the people, but *your* Justice and *my* Justice; and when a Whig is the suitor, he will bring you before a Whig Justice, and when a Loco Foco, before a Loco Foco Justice! He hoped the article would be stricken out.

Mr. Browning did not believe that those peaceful times, that golden era would ever come, when our posterity will have to inquire the cause of this provision. If gentlemen think so, it is one of those imaginary ideas that will never be realized. I hope it will be so, but suppose it is; will this provision do any hurt? There may be a village in one end of a large township, which contains a majority of the voters. Here without this provision motives of convenience if not of party may operate to secure all the Justices in the village. Would not this provision then be useful?

Mr. Chairman, I am attached to this provision—It is the only one, which makes me consent to an elective magistracy, and without it, I

fear the condition of that magistracy will be degraded.

Mr. Lambert thought this provision would draw party lines into the election almost necessarily—The whole thing would be managed by cliques, and it would carry politics through all the township officers.

The motion to strike out was agreed to.

Mr. Ewing moved to strike out "by ballot."

He said beside occasioning great inconvenience, it would enable a few, by preparing tickets, and handing them to the laboring men who come from their work to vote, without tickets prepared, to control the election.

Mr. Pickel suggested instead, to add after "ballot," *or otherwise.* Accepted by Mr. Ewing.

Mr. R. S. Kennedy hoped the motion would not prevail. He had seen enough of this rough and tumble mode of voting. He had often been carried over by a rush, and compelled to vote against his will: and if there is a count, they will count fairly on one side, while on the other, they will keep going through and through, and counting them over and over again until they hear how many there are on the other side and so always have a majority!

Mr. Child said this is a very important question. These are Judicial officers to be elected for five years, and they should be elected by ballot so that it may be known accurately who has a majority.

Mr. Marsh and Mr. Hornblower and Mr. Parker [G Parsons] were opposed to striking out.

Mr. Stokes thought voting by ballot would cause caucuses and the preparation of tickets.

Mr. Naar thought it would give more independence to the voter and greater freedom of option.

Mr. R. S. Kennedy thought there would be no way to decide whether the election was fraudulent or not unless the voting was by ballot.

The motion was not agreed to.

Mr. Parker moved to add "in such manner and under such regulations as may be prescribed by law."

Agreed to.

Mr. Gilchrist moved to add "and in wards of cities where they vote by wards."

Agreed to.

G The provision of Mr. Browning (that no one should vote for more than one justice of the peace when two were to be elected, &c.,) having been disagreed to,

Mr. Ten Eyck then moved to amend the section so as to vest the appointment of the justices of the peace in the Governor and Senate, and not to leave it to the people to elect these officers.

He said he was reluctant to move an amendment against what he feared to be the sense of the committee, yet that he felt constrained so to do by a sense of duty, let the result be what it might. He said he was opposed to the election of Justices of the Peace by the people, not because he believed the people to be incompetent properly to elect such officers themselves, but because he believed that this mode of election would have a tendency to destroy the usefulness, and to disqualify the officers thus to be elected for the proper discharge of their duty. He said it was only in the ability, wisdom and integrity of courts of justice that we have security for our rights and liberties, and he did not believe that the appointment of a Justice of the Peace in a popular election would be of any benefit to his integrity. He believed that we would not be as likely to find this virtue in the justice's courts, if appointed by the people, to so great a degree as if they were to be appointed in the mode proposed by him.

He would state a case. Suppose a Justice had been mingling in the scuffling bustle of a popular election, and had received his appointment by a bare majority, and was then to be called upon to determine a case between one of his political friends (one who had rendered him essential service in his election) and one of his adversaries; and the cases were nearly balanced, and he should be appealed to by his supporter and reminded of his recent services, what think you would be the result? Would he not yield? Mr. T. said it was to be feared he would—and if he should decide conscientiously, yet, under these circumstances, his conduct would be subject to suspicion, and Mr. T. said he held it to be just as important in a government like ours that our courts should be above suspicion, as that they should be free from corruption. A people understanding the principles of civil liberty required a Court in which they could have perfect confidence, and that could only be effected by placing it above the influence of party. No other Court will satisfy them.

Mr. T. said he could see no objection to placing this power of appointment in the hands of the Governor and Senate, in the same way the committee had determined to dispose of the appointment of the judges of the common pleas, (he would prefer the joint meetings, but he supposed that to be out of the question now.) He believed the appointment of justices of the peace to be equally as important as the appointment to judges of the common pleas; they determined questions

which in the aggregate, involved as much interest as the judges of the common pleas did, and he did not see why the lodgement of the power with the Governor and Senate in the one case, was not as important as in the other. It would limit corruption, and would give more satisfaction to suitors, it would relieve the courts from suspicion, but the committee, he saw, were impatient, and he would say no more, merely adding that ever since he had been acquainted with the object of courts of justice, he had been led to believe that they should be kept entirely free from the bustle of party, as well the less as the higher branches of the judiciary; it had been a part of his education, and he believed it to be indispensable to their usefulness.

[A]Mr. Browning would second the motion with great pleasure. He had hoped, if the Judges of the Court were to be elected, that there would be some means of election devised, by which the voice of party would be hushed. But after the decided vote that had been taken, that is out of the question. And yet if they are to be elected by the influence of men who are to be found haunting taverns, and have the adjudication of so great an amount of property, I shudder for the consequences. Those who have a large amount of property may escape its jurisdiction —but those who have but little, and they are by far the greater class, will frequently have their all, dependent upon its decisions. He should prefer these Judges should be appointed by the Governor or joint meeting. I want Courts of Justice to be not only chaste but unsuspected.

Mr. B. told an anecdote of one of these party Justices elected by the people a few miles from Philadelphia. He arrested upon one occasion two boys who were training a dog (sons of Dr. McLellan, of Philadelphia) for shooting a pistol upon some person's grounds, and fined them $18. The Doctor before paying it inquired of his friend, Mr. Samuel Rush, if the fine was rightfully imposed? Mr. R. gave it as his opinion that it was not. The Doctor calling upon the Justice asked him to show him the law for imposing the fine, and told him Mr. R's opinion. *Who's that,* says the Justice? *One of your Phila. lawyers! Send him over here and I'll show you what I'll do with him! Here is the law,* turning to the appendix of Purdon's Digest, and showing the Doctor an old statute of 1724, *against shooting fire-arms to frighten the aborigines of the country. But, says the Doctor, my boys were not frightening the Indians, and here it says that this law is "obsolete." I know that,* answered the Justice.—*That means "absolute," and so from my decision there is no appeal!* The Doctor paid the fine and took the boys home.

Mr. Ogden would also tell the gentlemen a story of one of the Justices appointed by our joint meeting. He took a recognizance upon one occasion with this condition. *You shall be and appear, &c. and shall in the mean time keep the peace toward all the dogs in this State, and particularly toward the dog of one Christopher Garabrant!*

Mr. Pickel opposed Mr. T's amendment.

Mr. Condit was in favor of it. He had no doubt that if the same person was elected by the people, who would be appointed by joint meeting or the Governor, in the latter cases, he would make the best Justice.

Motion not agreed to, [G]13 to 30.

[A]Mr. Hornblower offered an amendment that U. S. Senators should be elected by the joint meeting "at the first session by which the appointment ought to be made." He wished simply to provide for the election in case either House should refuse to go into joint meeting.

Mr. Field moved to strike out the section entirely. He said that was provided for by the Constitution of the U. S.

Mr. H. said we had a right to provide for the manner of making the appointment.

Mr. Browning doubted whether we had the right to appoint a Senator by joint meeting. The two Houses together do not make the Legislature, and he said it was Chancellor Kent's and Judge Story's opinion that he must be elected by the two houses separately, unless the joint meeting was established by precedent, so as to become a constitutional construction.

Mr. Field admitted we had a right to provide for the *mode* of election but *that* is not intended by the section, and he hoped it would be stricken out.

Motion to strike out not agreed to.

Mr. H's amendment was agreed to.

[J]The committee rose, reported the same to the convention, with sundry amendments, and were discharged from the further consideration thereof.

On motion of Mr. Parsons,

The report and amendments were laid on the table, and ordered to be printed.

On motion of Mr. Mickle.

The convention adjourned till to-morrow morning, at nine o'clock.

[Friday morning, 14th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Beck.

On motion of Mr. Pickel,

The convention resolved itself into committee of the whole, Mr. Schenck in the chair, upon the consideration of the report of the Committee on subjects not referred to other committees.

[A]1. Preamble: agreed to.

2d. "Distribution of the powers of government:" agreed to.

[3rd.] Schedule, section I:

Mr. Hornblower enquired if this was applicable only to State Laws, and wished some alteration be made so as to preserve the common law also.

Mr. Jaques asked the Chief Justice to give him the definition of "common law."

Mr. Hornblower explained the difference between statute and common law.

Mr. Jaques then enquired where this law was found? He had never seen it.

Mr. Browning read from the old Constitution of this State, in reply.

Mr. Jaques said that was no answer to his question.

Mr. Hornblower again explained the term and proposed to insert "all common and statute laws."

Mr. Browning suggested it was better to strike out the words, "they expire by their own limitation."

[G]Mr. Parker moved to amend so as to continue in force so much of the common and statute law in force on the 2d of July, 1776, as has not since been repealed, and also to continue in force all the statute laws of New Jersey now in force. [A]Mr. Hornblower accepted it in lieu of his own.

Mr. Jaques promised at a future time to give his views upon this subject, which he was aware were novel and startling. The present system of laws was a grafting of the aristocratic and monarchical on the Democratic form of government.

Mr. Zabriskie concurred fully with Mr. Jaques.—The common law consists of the principles of the English law and govern the decisions of our benches. Thus the decision of Judges under a despotic government becomes the rule for the decisions of a free people. He could not see why the principles by which we are to be governed should not be engrafted on the Constitution. We had now merely put together

portions of various systems throughout the world and thus formed the beautiful government under which we live. Where under the present laws was there any security? How often did it happen that laws passed with a plain intent, had been abrogated by the decision of Judges. He instanced the Judges of the Supreme Court of the U. S. and he hoped that all the essential provisions of the common law, would in due time be engrafted on our statutes.

Mr. Hornblower asked if every Judge was to make laws for himself as soon as this Constitution went into force? He asked the gentleman to look into the statute book, and tell him what was an estate—fee simple—dower—murder—rape—where would he find them in the statute. If the framers of our Judicial Constitution had legislated from the declaration of independence until now, they could not have framed provisions to meet the various circumstances which were constantly transpiring, but which came within the provisions of the common law.

P. B. Kennedy said the Committee had no idea of abrogating the Common Law. They deemed the provision reported to be ample to cover all the ground necessary. The term "all laws" certainly covered the Statute and Common Law.

Mr. Hornblower asked if it would not be more secure to insert the words "common or statute laws."

Mr. Kennedy would have no objection if they were at all necessary, and he read from the Constitutions of several States, containing a provision similar to that reported.

Mr. Zabriskie was not surprised that gentlemen of the law should be excited at this. If there was anything resulting in the most despotic consequences, it was the privilege of the Bench and Bar of bringing in the provisions of the Common Law. No one but the Bar knew where to find these provisions. Here were punishments set down for the highest crimes, but there was no definition of them, so that the people could know what they meant. He read from the statute of this State, containing a restriction on this subject. He saw no reason why there should not be a civil code prescribing how far the Bench and Bar should go. Public attention should be called to this subject, and some restriction ought to be made.

Mr. Ogden thought it would be more dignified to argue this question on its merits, than to refer to any particular class of the members composing the Convention.

Mr. Parker expressed his surprise that a gentleman who had so long lived under the beneficial provisions of this Common Law as Mr. Jaques, should ask now what it was. It was the right to live, to breathe.

He might as well ask him what was air, and he could answer just as readily.

Mr. Naar reminded the Committee of the question before them, which seemed to have been lost sight of. He opposed the substitute of Mr. Parker, as it would require them to look back to precedents out of date.

Mr. Parker withdrew his amendment, and the amendment offered by Mr. Hornblower was agreed to.

Mr. Hornblower moved to include *municipal corporations* in the provisions of the 1st section.

Mr. Williamson suggested, "*and all charters of incorporation*" was sufficient, and Mr. H. did not press this amendment.

The words suggested by Mr. Williamson were inserted.

Section 2d. Mr. Marsh moved to strike out the words "for the term" as there were some offices whose terms were not defined at all. Not agreed to.

Mr. Naar moved to add in the 1st line, "and enjoy the compensation of." He did this because the next Legislature might diminish or increase the salary of officers. He withdrew it, on the suggestion that it was unnecessary.

Mr. Ogden moved to strike out the word "for the terms, &c.," and insert, "according to their several appointments or commissions." Agreed to.

Section 3d—Mr. Spencer moved to add "and in the exercise of his duties as Chancellor."

[C]Mr. Randolph moved to amend so that the governor, chancellor, ordinary, treasurer, keeper and inspectors of the state prison should continue in office until successors should be appointed under this constitution. Agreed to.

[Section 4 and 5.] Mr. Randolph moved to amend so that the governor should fill vacancies in office which might occur, and grant commissions which should expire at the end of the next session of the senate, or when a successor should be appointed.

[A]Mr. P. B. Kennedy offered a substitute providing for the filling of vacancies in the offices of Clerks and Surrogates, to hold office until the election in October 1845.

Mr. Naar submitted a provision that the election of Clerks and Surrogates should be held at the fall election next previous to the expiration of their term of office, the result to be ascertained in the same manner as that of Sheriff.

Mr. Randolph's amendment was agreed to, and Mr. Naar's was

added to it, after some desultory remarks upon the effects it would have, and it was made section 5.

Section 6. Agreed to, the words "or person administering the government" being inserted on motion of Mr. Hornblower.

[C]Mr. Sickler moved to strike out "great seal" and insert "broad seal." (Laughter) [Referring to the congressional election of 1838, when Gov. Pennington certified the election of six Whig candidates, although five Democrats had admittedly won. The dispute over their seating prevented the organization of Congress for some time, and the affair became widely known as the Broad Seal War.]

[A]Mr. Naar suggested that the word Broad would not apply as the Seal was round.

Mr. Sickler's motion was not agreed to.

Section 7—Oath of office.

Mr. Ogden moved to insert the words ("of State") after secretary. Agreed to.

[C]Mr. Parker moved to strike out the clause prescribing the form of the commencement of commissions, and of the conclusion of indictments. Not agreed to.

Mr. Jaques enquired what was meant by the "dignity" of the state, in the conclusions of indictments. (Laughter) No member seemed able to answer.

[A]Mr. Clark said it was the Common Law.

Mr. Ryerson moved to insert in the 19th line "or person administering the government." Agreed to.

Mr. Parker moved to strike out "The State of New Jersey to ——— ——— Greeting."

Not agreed to.

[C]Mr. Naar moved to amend so as to require all officers to take, in addition to the oath prescribed in the report for all officers, the oaths now prescribed by law: but a general repugnance being expressed by the convention to the multiplication of oaths, the motion was withdrawn.

[A]Mr. Stokes said I presume the Committee are not prepared for the views which I am about to present. I do not believe in the necessity or obligation of an oath or affirmation. I do not believe these would give any qualification to the performance of the duty of any office, nor do I believe there is any force in the obligation felt. It is in my opinion not only entirely useless but worse than useless. It is an indignity on any honorable honest man to compel him to take an oath that he will do or perform certain duties. It is radically wrong, a partial remnant of

barbarous times, and I would rejoice if I thought that the people of New Jersey were prepared to take a stand against oaths or affirmations. An honest man will not feel the more constrained to do his duty faithfully by the obligations of an oath. He has in him the principle which would impel him to its faithful performance without it. The penalty for perjury no doubt has its influence, but this could be without the formality of an oath. Property and life would be just as secure as now, and the duties of the various offices would be performed just as faithfully. I object to the multiplicity of oaths on trifling subjects, and I shall rejoice if the Convention are prepared now to take a stand on the side of truth and right. [G]He moved therefore, though he had no prospect of success, to strike out the whole section. Not agreed to.

Mr. Gilchrist moved to amend so as to authorize the legislature to prescribe other forms of oaths, or to dispense with them entirely [by prefixing] [A]to the 8th section the words "until otherwise provided by law."

Mr. Hornblower seconded this amendment, as he said it would be in the power of the Legislature, if public sentiment should change on this subject, to act in accordance with it.

Mr. Naar suggested that this was going too far, as it would leave it in the power of the Legislature to fix a test, or a religious oath, and he was sure no one was prepared to submit to that.

Mr. Stokes said the Bill of Rights guarded against that.

Mr. Hornblower again advocated the amendment, and said the multiplicity of oaths was perfectly frightful. The oath in confession of judgment was probably the cause of more perjury than any other kind.

Mr. Clark was also in favor of the amendment, and hoped the Legislature would soon abolish oaths and affirmations, as he could see no good in them. The penalty for falsehood could be as easily inflicted as for perjury.

Mr. Vroom suggested that the whole section was quite unnecessary. Where no particular form of oath was pointed out, there was a provision in the statutes, and he read from Elmer's Digest pg. 353. Some of the oaths, such as that for the Chancellors, Clerks and Governor, were very appropriate, and he would be sorry to see them dispensed with; but he saw no necessity for any constitutional provision on the subject at all.

Mr. Gilchrist was in favor of retaining a form of oath for members of the Legislature, or he would go for striking out the section.

Mr. Condit wished to retain the form of oath to be applicable only to members of the Legislature.

Mr. Zabriskie quoted from the 6th art. of the Constitution of the U. S., providing that members of the Legislature must take an oath or affirmation to support that Constitution.

Mr. Jaques moved to strike out *"and all officers commissioned by authority of this state."*

After some remarks the vote on Mr. Stokes' proposition to strike out the whole section was reconsidered and the question being put again on that motion it was not agreed to, and Mr. Jaques' amendment was agreed to. He then moved to strike out words *"of the office of,"* and insert "of Senator or member of the general assembly as the case may be," which was agreed to.

Mr. Zabriskie offered an additional section to come in after section 8, which was agreed to: viz—"No religious test shall be required as a qualification to any office or public trust in this State."

Section ninth was then struck out on motion of Mr. Wood as this was provided for in the 13th section of the law under which this Convention was formed [procedure for determining vote on the constitution], and the provision introduced by Mr. Zabriskie was made section 9.

[G]Mr. Naar moved [A]Section 10—"The general elections for the year 1844 shall take place as heretofore provided by law," which was agreed to, the object being to secure two days for the elections this year, as the various Counties have made arrangements to that effect throughout the State.

[4th.] Provisional article.

Section 1st—Mr. Randolph offered an amendment making the Secretary of State auditor of the *public accounts, until otherwise provided by law.*

Mr. Vanarsdale said the amendment did not meet the object which the mover of the resolution on which the section was founded, had in view—The great difficulty was to get at the claims due to the State. New Jersey by having no officer to get at this information might lose thousands, and no one would be the wiser.

Mr. Parsons thought the amendment unnecessary, and he read from Elmer's digest the duties of Treasurer.

Mr. Condit thought there was a necessity for further provision by law, but it struck him that it would be best to leave it to the Legislature. If a provision of this kind was adopted in the constitution, it would prevent the Legislature from adopting any other system.

Mr. Jaques thought the amendment did not fully meet the views of the gentleman from Essex. It was necessary that the Legislature should

have evidence of the receipts given by the Treasurer, and how was this to be obtained?

Mr. Stratton moved to make it the duty of the Secretary of State to keep account of all sums due to the State.

Mr. Jaques.—How is he to get at them?

Mr. Ryerson.—Had we not better leave the whole of this to the Legislature.

Mr. Stites read from the Law, the duty of the Secretary of State, in which it is laid down that all receipts given by the Treasurer should be carried to the Secretary of State, countersigned by him, and registered. The Committee had looked at this provision and thought the section as reported covered all.

Mr. Vanarsdale again suggested that the amendment did not cover what he wished, viz: claims due to the State. Suppose the Treasurer has a man's note as often is the case, and he takes it up. No receipt is given, and how is the money to be accounted for. That was the difficulty he wished to get over.

Mr. Gilchrist thought the report covered all the ground necessary.

Mr. Randolph withdrew his amendment except the proviso "until otherwise provided by Law," and the section as thus amended was agreed to.

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

On motion of Mr. Mickle,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

On motion of Mr. Stites,

The convention resolved itself into committee of the whole, Mr. Schenck in the chair, upon the consideration of the unfinished business of the morning, being the report of the Committee on subjects not referred to other committees.

[G]Mr. Child moved to amend [A]the 4th article, so as to read "All property *taxed* in the State of New Jersey shall be taxed according to its value, &c." He said, this will allow the Legislature to tax what property they may deem expedient. The article as it reads will tax bonds and mortgages, which as long as the interest in New York is 7 per ct. would not be expedient. Much of our capital is now going to N. York to the injury of the people of N. Jersey, for we have no surplus capital here. But if this provision is retained, our capital will

either be transferred to New York and the tax avoided for the mortgage cannot be reached here, or else if it is loaned in this State the mortgagor will have to pay it. It will not be unreasonable for him to say to the mortgagee "When I loaned you that money, I expected to receive, and you to pay me 6 per cent, for it, without being taxed,—and now you must return to me the money or pay me the tax." Now the principle is correct that every man should be taxed according to his property, but it will work an injury to the poor man by compelling him not only to pay interest, but also the tax on the money he has borrowed. He should prefer however that the section should be retained, but amended, for he thought in a few years, the Legislature might adopt such measures as will make it expedient to tax bonds and mortgages.

Mr. Pickel said the amendment would destroy the benefit of the whole section. If the principle is right let us adopt it on its merits, and if not let us strike it out. The objection is the old one that it will withdraw capital from the State. But the citizens of N. York are taxed for what they are worth, without asking where their property is. A man has a right and ought to have, to hold his property in real or personal estate as he chooses, but he ought to pay his tax.—The poor man, as it is now, pays almost all the tax, while rich men, who are living on their thousands pay almost no tax at all. We are now engaged in setting forth a set of principles of justice between man and man, and it is on this principle that we ask this clause to be inserted in the Constitution. He hoped the principle would be met on its merits. He knew the subject had some difficulties, but he hoped the subject would be fairly met, and the principle adopted, if it is right.

Mr. R. S. Kennedy thought the section was very objectionable. We shall have to tax all property, on household furniture and luxuries, watches and spectacles, every thing. He thought too, it would not be just to tax all property alike. The Legislature heretofore have taxed houses and lots higher than farms and they higher than horses. The gentleman from Hunterdon seems to be the friend of farmers, but this will operate very hardly upon them. He thought it would be safest and best to leave all this subject to the Legislature. If they choose to try experiments and tax bonds & mortgages, he had no objections, but he thought we ought not to tie up the hands of the Legislature by a Constitutional provision. He hoped the section would be stricken out and so moved.

Mr. Child withdrew his amendment.

Mr. Jaques hoped it would not be stricken out.—He thought the section might be amended so as to meet the purposes desired, but he

was not prepared at this time to propose such an amendment. He had lived in N. York and knew that all property was taxed there, real, personal and mixed. A man is taxed for what he is worth, as he is allowed to deduct his debts. As to the danger of withdrawing capital, he said that money could now be had in N. York for 5 or 5½ per cent. He was a Trustee for a small institution which had a small sum of money at interest there, and they have had to reduce their interest to 6 pr. cent. or else the mortgage would be paid off.

Mr. Ogden would take issue with the gentleman who last addressed the Committee. The difference in the rate of interest established in the States of New York and New Jersey, has certainly driven capital from our State. I know, sir, that our manufacturers and citizens of enterprize, have been seriously injured by the effects of this inequality of interest. Money which had usefully been employed within our borders, has under this influence been withdrawn from our industry. We cannot safely base our action with reference to the future, upon the present market value of money. We are now in peculiar times, and money can be obtained at very cheap rates; but past experience teaches us, that we ought not to rest any principles of our Constitution upon so unsound a basis.

If all property is taxed in the State of New York it is not under any Constitutional provision. The matter there has been regulated by Statute, and I think sir, we are as capable of making the necessary provisions through our Legislature as our neighbors are. Sir, I am in favor of the principle of equality in taxation, but I dare not incorporate it into our Constitution. If we act upon it in this manner, we shall endanger our future assessments, by making requirements, which if not fully complied with in every instance, may jeopardize the entire assessments, and subject it to the reversal of our Supreme Court, for its unconstitutionality.

Mr. Hornblower must admit the general principle of the gentleman from Hunterdon, but whether it would be wise to adopt it in the constitution, he was not prepared to say. The greater part of the property he owned, after 40 years hard labor, was invested in bonds and mortgages, and he was willing to pay tax upon it, if the principle could be made to operate equally and justly. But as at present advised, he was rather inclined to leave it all to the Legislature. He was afraid to adopt the plan of N. York, to put a man upon his oath as to what he is worth. But if a plan can be devised, to discover honestly and justly all a man's visible and other property, so as to carry out fairly the abstract principle of the gentleman from Hunterdon, he should be entirely satisfied;

but otherwise, I think it had better be left to the Legislature.

Mr. Naar hoped this section may not be stricken out. This, though the last, is not the least of the provisions of this proposed Constitution; gentlemen have not dealt with it in a manner worthy of its importance —it seeks to establish a principle in matter of taxation, based upon the principle of our government, which is *equality*. In order to discuss it fairly, we ought to consider the purposes of taxation, when we reflect that it is for defraying the expenses of government, and revert to the necessity of those expenses, we would then find that it is to the protection of property that we owe them. Our courts of justice, our judiciary officers and ministers of justice with large salaries are rendered necessary by the necessity of protecting property, and property therefore ought to bear the burden, and it ought to bear it equally. It is not denied that the mode of collecting taxes in this State is unequal, and that one species of property pays a larger proportion of the taxes of the State than another of much greater value; and I would ask gentlemen if this is consistent with the spirit of our institutions?

But, sir, there is one great evil growing out of this unfair mode of taxation, which operates upon one of the features of the Constitution about to be formed, and which has not been alluded to. I mean that feature which establishes an unequal mode of representation in the Senate. Why has that mode of representation been adopted? Why, sir, mainly because the manner of levying of taxes has been burthensome and unfairly applied to the agricultural districts. In the discussion of that question, with gentlemen of various parts of the county, my arguments in favor of basing representation upon population, have invariably been met with the expression of fears of additional burthens upon counties which are principally agricultural. They say to me, "why your county of Essex, which sends seven members to the House pays no more tax than Gloucester, which sends only *two*." They look to this unequal representation, as their only protection against further invasion of their rights. With these views I shall object to the striking out of this section, and if it does not prevail, I will move an amendment which will make it more satisfactory to me, and I deem it proper to state that amendment now. I will propose to strike out the first line, and insert these words, "taxes shall be levied upon property according to its value." I will do so in order to get rid of the odious poll tax which burthens the laboring portions of the community who have no property to protect.

Mr. Ogden—Do I understand the gentleman to say that no one has any thing to be protected by the government, but the property holder?

Are not life, liberty, and reputation, matters which should be protected by the government? I hope the time will never come when it shall be held in New Jersey that the object of government is only to protect property.

Mr. Naar explained that the great object of government was to protect property. If it was not for property, it would not be necessary to raise money to support a government. Our social affairs we could regulate among ourselves.

Mr. Browning—How could the gentlemen from Essex raise the expenses of committing persons guilty of arson and murder, and of keeping them in the State Prison?

Mr. Child explained that he had been misunderstood. He was not opposed to the principle of the section. He said he was in favor of it; but he had contended against the expediency of it, at this time, and he had attempted to show the evils that would result from it.

Mr. Pickel said that there was no state in the Union where the taxes were collected upon so much system, and so quick and safely as in New York, where this system was adopted. He only asked that this question should be settled upon principle. Let every question stand upon its own merits. If our rate of interest is too high, let that question come up at another time, but let this be decided by itself.

Mr. Jaques said—If we want to keep our capital here we must put up our interest to 7 per cent. There will be plenty of money if we will only pay enough for it.

The section was struck out,—Ayes 31, Nays, not counted.

The committee rose, reported the same to the convention, with sundry amendments, and were discharged from the further consideration thereof.

On motion of Mr. Wood,

The report and amendments were ordered to lie on the table, and be printed.

Mr. Field, from the select committee to which had been referred the subject of common schools, submitted the following report:

The committee to whom was referred the subject of common schools, beg leave to report, that the following provision ought to be inserted in the constitution:

The fund for the support of free schools, and all money, stock, and other property, which may hereafter be appropriated for that purpose, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public schools, for the benefit of all the people throughout the state; and it shall not be competent for the legislature to borrow, appropriate, or use the same, or any part thereof, for any other purpose, under any pretence whatever.

Which was read, and,

On motion of Mr. Field,

The convention resolved itself into committee of the whole, Mr. Mickle in the chair, upon the consideration of the foregoing report, and of that of the select committee appointed to inquire into the propriety of instituting a court of reconciliation.

[A]Mr. Field said he should have preferred that another article should have been adopted, making it the duty of the Legislature to pass laws for the promotion of Education; but as he knew that there was some diversity of opinion upon the subject, and as he wished to see it acted upon with entire harmony, he had consented to forego. He explained the above article, saying that the provision that the Legislature should not appropriate or use the fund for any other purpose, under any pretence, was an important one. Some time ago the debt of the state to the School Fund was something like $100,000, and now it was $75,000. He hoped the article would be adopted.

[C]Mr. Pickel moved to strike out this prohibition. Not agreed to.

Mr. Hornblower moved to strike out the article. He was opposed to it not because he was opposed to common schools, but because they are of recent origin—a novel experiment, whose moral, political, and religious consequences were yet unknown. He was, therefore, in favor of leaving the system to legislation, and not of making it now a fundamental principle of our government. Sectarian feelings and animosities are already growing out of it; and for himself he believed it would be better to expend the whole fund now carefully in school houses and libraries and leave them to be sustained by taxation.

The quarrel has begun in other states—in Massachusetts, New York, Ohio,—and it is beginning to show itself in this state. And already, in one district, one sect has employed able counsel to ascertain whether they have not a right to claim that their share of the fund should be abstracted from the general fund.

It has done little good. It is squandered—wasted.

He did not now express an opinion against common schools and education; but he was opposed to establishing as a part of our Constitution, an article for the preservation of this fund, which might become a corruption fund and theme of quarrel and controversy.

Mr. Field knew the committee would not listen to a long speech;

but it was his duty to enter his solemn protest against the doctrines just advanced by the Chief Justice of the state of New Jersey. He had listened with pain, he had listened with astonishment and regret to such sentiments from such a quarter.

Our common school system an experiment! A novelty! A novelty, sir, in this quarter of the world, of which this system has been for the last hundred years our pride, our glory, and our boast. An experiment, sir! Why sir, the pilgrim fathers landed on the rock of Plymouth in 1620, and in 1647, only 27 years after, the foundations of a common school system were laid in Massachusetts. The school house and the church were built up side by side and their spires pointed together to Heaven; and if there is one thing to which Massachusetts is indebted for her superior intelligence and superior virtue, it is her common school system.—It is this that makes her an object in this country and in Europe of imitation and emulation.

But the gentleman from Essex says there is danger that this fund will cause sectarian strife and contention; and he warns us to beware of them. Does he expect in this country to put an end to sectarian strife? There is but one way to accomplish this; destroy the Christian religion and the bible and you put an end to sectarian strife. But so long as the Christian religion exists and so long as that glorious book unfolds its blessed leaves to the contemplation of freemen, there will be sectarian contention and strife.

The gentleman says the school fund now does no good in New Jersey. I admit it, sir, and it is a disgrace and reproach to New Jersey that we are far behind N. York and most of the New England states in our system of education. But sir, is that a reason why we should not incorporate in our constitution a provision that will stimulate the zeal of future legislatures and induce them to give some portion of their attention to this subject?

The gentleman moved to strike out the section. I am not very solicitous to make this section a part of the constitution, unless we shall go farther and consecrate the cause of common schools by making it the duty of the legislature to perpetuate them. But, sir, when the gentleman based his motion to strike out the section on the ground that our common school system was an experiment, a novelty, and a dangerous one, I could not sit still.

Mr. Hornblower said he had said not one word against common schools, or public education. It is true I spoke in favor of striking out the section and the gentleman himself is in favor of it. Instead, sir, of being opposed to common schools, I said I wished this fund to be invested in school houses and libraries, in order to carry on this school system. But I did say it was an experiment; and will anybody deny that? It is true common schools were established by the pilgrims; but it is but a short time in the history of the world since that time; the world was peopled centuries before.

I am not prepared sir, to admit that the people of Massachusetts are so much more virtuous than we are—so much more intelligent—so much more enlightened—so much more patriotic—

Mr. Field. I must correct the gentleman—I did not say more patriotic.

Mr. Hornblower. I believe, sir, the people of New Jersey will compare well in every one of those points with the people of Massachusetts. But, sir, how is it in Massachusetts? I don't believe that you can find such an article as this in the constitution of that state. I don't believe the preservation of the school system is made a constitutional provision in the other New England states generally.

Mr. Field. Yes, sir, it is in almost all the constitutions of the New England states.

Mr. Hornblower. I know there is a constitutional provision in Connecticut; and I believe the system of common schools in that state is not as good as it used to be.

But, sir, my argument is simply against making this a constitutional provision. If the system is useful I wish to see it continued; and as long as it shall be useful, we may rely on the intelligence of the people of New Jersey to protect and preserve it. But sir, the time may come—in the next twenty five years—that circumstances will require a totally different plan to be resorted to. Even now there are conflicting opinions. Some contend that different sects are entitled to a division of this fund; others that they are not. By and by this will be a subject of controversy and let us leave the whole control of it to the legislature and decide in regard to it, as circumstances may require.

Mr. Parker said he was surprised (and he hoped he would be allowed to say so) at the motion of the gentleman from Essex and a little surprised too, at the consent of the chairman of the committee. (Mr. Field.) I trust the convention will not strike out this article. For myself, I don't feel disposed to question the advantage of diffusing knowledge among the whole community. In such a government as ours, I wish to extend to the poor as well as the rich, every opportunity to acquire knowledge and raise themselves to honor and to stations of eminence. I wish for such laws and such a system that those of our people who begin at the bottom of the ladder may get to the top. I

wish knowledge to be diffused in the community as the best protection against crime. The gentleman from Essex speaks of going back to good old times. I don't want sir to go back to the good old times, when if a man were convicted of a crime, he could, if he could read, claim the benefit of clergy. I want the time to come, when every man can read and judge for himself, the scriptures and every book of useful knowledge.

In 1816 our school fund originated. It was the Revolutionary debt due the state of about $50,000. The Legislature, with a unanimity which I fear we are not likely to have here—appropriated the sum to the purposes of education. That was the foundation of this fund; and so popular was the measure, that two years after another act was passed which added other sources of revenue to the fund and the thing has gone on until now it amounts to $320,000, or $330,000. It has since distributed annually a fund of $30,000, for the education of poor children; and so popular had the system become that the legislature authorized the townships to raise money for the support of schools in addition to the amount received from the state fund. And Sir, I don't know a township in the state, which does not lay such a tax—so popular is this system. And in some parts of the state, it has been so popular, that the legislature have been obliged to pass a supplement to prohibit the townships from raising by tax more than twice the amount received from the state.

So popular is it, that I never heard a discordant voice. I never heard a single person suggest that the system was dangerous and might produce sectarian excitement. I never heard this from any quarter, until I heard it this day from the gentleman from Essex. But sir, these fears are groundless. Boys and girls—children are not sectarians. And if people from other countries are sectarians there, they soon lose their sectarianism after they come into this state and breathe our republican atmosphere. They become more liberal at once. There is no danger of a religious hierarchy in this state, or that the project will ever be proposed without being at once put down by public sentiments.

The question is whether we shall now put in the constitution and incorporate in our fundamental law, a provision for the perpetuation of this system which is approved of so universally by the community. I see no objection to it, and I was sorry to hear the chairman of the committee (Mr. Field) say that he was indifferent whether this article were stricken out or not. In the committee, he wanted us to go farther, and was disappointed that we had not done so. Is he of that disposition that if he can't get what he wants he will have nothing. Sir, I do not

like such a course, and as he protested against the opposition of the Chief Justice, I protest against his indifference. I protest against both gentlemen. (Laughter)

If, sir, there is any one thing that we should foster in its germ, and nurture sedulously till it becomes a tree and covers the whole earth with its protecting shade, it is a system of general education. Ignorance is always the enemy of liberty; knowledge is its ally and defender. And, sir, I hope we shall give this article our unanimous support except and notwithstanding the opposition of the gentleman from Essex and the indifference of the gentleman from Mercer.

Mr. Field protested against the gentleman's representation of his remarks. He had not said he was indifferent as to the adoption of this article. He had said that it did not go far enough and if accomplished so much less than he desired, that he was not solicitous for its adoption.

Mr. R. S. Kennedy offered a substitute providing for the distribution of the fund among the counties, binding them at the same time to devote it sacredly to the cause of education and declaring that no part of it should be used for the support of sectarian schools. He believed that individuals could manage money matters better than companies, companies better than counties, counties better than states and Uncle Sam worst of all. He believed that the counties could invest all this money on good farms at six per cent. interest, instead of loaning it out as now, for less than six per cent. and some of it on stock security. There was danger too of sectarian contention. It is coming in upon us on both sides—from New York and Philadelphia and already we have it in one corner of New Jersey.

The provision he offered, would cover all difficulties of that kind. If we should adopt it, there would be no danger from either Bishop Hughes or the Pope of Rome. It would make the schools what they ought to be—common schools, free for all classes and all sects.

We may expect the same war here as we have seen in other states, and we might as well meet it now, and stop, in advance, all danger of such riot and bloodshed as we have lately seen in neighboring states.

Mr. Wurts said he was in favor of striking out the section, but not because he was opposed to public schools and the general diffusion of education. He wished he might not be misunderstood, as he believed the Chief Justice had been grossly misunderstood. He was not opposed to the school system but he was opposed to establishing it by a constitutional provision. He subscribed heartily to all that had been said in behalf of education by the gentlemen from Mercer and Middlesex; and he believed the Chief Justice did also. But there is a distinction

between the school fund and common schools, and the question is whether the former is a benefit or an injury to the cause of education.—There is no school fund in Massachusetts; there is one in Connecticut. He believed the common schools were in the best condition in those states which had no fund. In Connecticut he believed the schools had depreciated. In other New England states where they are sustained not by a fund but wholly by an annual tax, they have improved.

I am as warm a friend of education as any man in this convention; but I think such a provision in the constitution unnecessary. This fund may at some future time, cause great trouble. The time may come when it will be very important that it should be disposed of—not in such a way that education should be discouraged, but so that it may be sustained on some other plan. Why, sir, can we not trust this to the legislature? This fund is emphatically the child of the legislature. It was created by them, and fostered by them till it had grown to vigorous youth; and if they think it prudent, they will protect it till it reaches vigorous manhood. But they may think, in circumstances which may arise, that education will best be promoted by some other system. Why then will you put this in the constitution? Is there any danger in leaving it to the legislature as heretofore? It is all owing to their care that you have any fund.—Why then take it from their care? They have protected it and they will protect it. I am willing to leave it with them and can do so with perfect confidence. I don't believe that the day to dispose of it will come, but it may and it is best not to tie up the hands of the legislature.

Mr. Hornblower would not have risen again, if he had not been so injuriously misrepresented, as opposed to education; I am in favor of education. I don't yield one atom to the gentleman from Middlesex in zeal for it. If any man has cause to love the common school, I have. I was not blessed with an early education. In consequence of feeble health, I grew up in ignorance until I was nearly 20 years of age. I know nothing but what I have learned by my own studies, without the aid of friends or money—except what I acquired in my boyhood in a common school. And does that gentleman suppose then that I don't value common schools? And yet he talked as if I considered them of no value. I think, sir, it was ungenerous, especially when I expressly based my motion to strike out not on my opposition to common schools but on the expediency of establishing the present system by a constitutional provision.

I was one of the earliest supporters of this system and I have done as much for it as that gentleman, except that I was not in the legislature to aid in establishing it. But, sir, I have traversed counties and made many efforts in my feeble manner, to support it. [In 1838 Hornblower had presided in Trenton over a convention of "friends of education" which decided that "the school laws are defective and ought to be repealed."]

I repeat, sir, what I stated at first that my objection is not to common schools—but to making the present system a part of the constitution, because time and experience may prove that the cause of education may be better and more advantageously maintained and promoted in some other way.

(Mr. H. spoke with much sensibility.)

Mr. Green expressed his full concurrence in the views of Mr. Hornblower, and as a friend of education, and as speaking the opinions of many of its wisest and best advocates, defended those views earnestly and at length.

Mr. Field replied ably and eloquently to Mr. Green.

Mr. Parker said if he had said anything to reflect upon the gentleman from Essex, he did not mean it, and he was sorry for it. He had spoken in the warmth of the moment. It was his nature to do so, and he could not help it. But he sincerely regretted if he had wounded his feelings.

Mr. Ogden opposed the motion to strike out and Messrs. Stokes and Allen advocated it. It was not agreed to.

The report on the subject of Education was then laid aside to be reported, and the Committee took up the report of the Committee recommending an article authorizing the legislature to establish courts of Reconciliation.

Mr. Jaques advocated the article, but the Committee being strongly opposed to it, presumed so much upon the imperturbable good nature of Mr. J. as to amuse themselves for some time with his report. (Mr. J joining with them in the sport).

Mr. Ogden thought it was already provided for in the Judiciary Report, which provides for the establishment of Inferior Courts.

Mr. Jaques explained the object of the Committee to be to get the words, "Court of Reconciliation" in the Constitution somewhere. He said it would be a useful Court—one founded on common laws, or rather, common sense; which was not the case with some of our other Courts, as he might attempt to show at another time. He advocated the adoption of the Report.

Mr. Randolph offered an amendment—"the practice and proceedings of which shall be regulated according to the rules of common law." (Laughter)

Mr. Jaques would have no objection if the common law as it was originally understood, in the time of the Anglo-Saxons, was intended, but he should object to it if the common law, as it now exists, was meant. That was the very thing which he wished to avoid.

Mr. Ogden suggested that the question should be taken on Mr. Jaques's amendment—"as it was in the times of the Anglo-Saxons."

Mr. R. P. Thompson. Mr. Chairman, I have another amendment to offer.

The Chairman. You cannot offer any more. Oh no, Sir.

Mr. Thompson. Why, I believe the question has not yet been taken on the article. I apprehend I have a right to move an amendment to it.

The Chairman. No Sir; we have got an amendment to an amendment, and we cannot have any more!

Mr. Jaques's amendment, as suggested by Mr. Ogden was agreed to, as also Mr. Randolph's amid much merriment.

Mr. Jaques. I did not make any motion to amend, Sir.

The Chairman. It is agreed to, Sir.

The Report was then disagreed to.

The committee rose, and reported the report of the committee on the school fund to the convention, without amendment; and also reported that they had disagreed to the report of the committee on the court of conciliation, and were discharged from the further consideration of [illegible] reports.

On motion of Mr. Parker,

The report of the committee of the whole on the school fund, was ordered to lie on the table.

On motion of Mr. Stratton,

The report of the committee of the whole on the court of reconciliation, was ordered to lie on the table.

On motion of Mr. Zabriskie, it was

Ordered, That when this convention adjourns, it will adjourn to meet on Monday afternoon, at three o'clock.

On motion of Mr. Stites,

The convention adjourned to Monday afternoon, at three o'clock.

MONDAY AFTERNOON, 17th June.

At three o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Kidder.

Mr. Vanarsdale presented the petition of sundry citizens of this state, praying that no distinction be observed in the constitution between citizens born in the United States and those of foreign birth in respect to their qualifications for members of the House of Assembly and governor, and to exclude from the provisions of the constitution all distinctions between citizens;

Which was read, and,

On motion of Mr. Wurts, was ordered to lie on the table.

On motion of Mr. R. P. Thompson,

The convention proceeded to the consideration of the report of the Committee on a Bill of Rights and Privileges, as amended in committee of the whole;

And the first section being under consideration, the same was agreed to, without amendment.

The second section being under consideration, the amendment made to the same, in committee of the whole, was agreed to.

The same section being still under consideration,

Mr. Jaques. If will be recollected that when in Committee of the Whole, I offered an amendment to this section, to the following effect, that, "on entering into society, men give up none of their rights; they only adopt new modes, by which they are the better secured." I now offer it again in order to rebut an error almost universally entertained in Europe and in this country, which is that on entering into society men give up their rights. I believe this to be an error, a falsehood, and the cause of most of the evils in our legislation and judicial proceedings.

Blackstone's commentaries on the law of England is the text book; and is the first book put into the hands of the student at law. He lays down the origin of law, and the rights of persons pretty correctly, and extols their beauties, their excellencies, and observes that they would be most benign in their effects if they could be reduced to practice; but observes, owing to the ignorance, the perversity, or depravity of man, it is impossible. Therefore on entering into society men give up their rights. This is the doctrine of the monarchies of Europe. And even there men do not give up their rights—their rights are taken from them either by force or fraud. But in a republic like ours, the doctrine is not true, it is false. In our declaration of independence, we say men have rights, and that they are inalienable. How then can they be given up?

I would not be thus confident had I not the best of authority to support me in the view of the subject which I have taken. Thomas Jefferson than whom, there never lived, nor does there now live a man who better understood law, or the science of government; Professor Weyland, of Brown University, in his elements of moral science, and the late Wm. E. Channing, all concur in the opinion, that on entering into society men do not necessarily give up their rights; they only adopt measures by which they are the better secured.

I do not offer this amendment with an expectation that it will receive the sanction of this Convention. I do not know that there will be a single vote given in its favor on this floor, excepting my own. I present it with a view to combat error, and to advance the truth. I wish the ayes and noes to be taken, that I may have an opportunity of recording my vote against the absurd, the erroneous doctrine, that men give up their rights on entering into society.

The opposite doctrine is the doctrine of democracy, of liberty and of human rights, and until it is fully believed, and acted upon, free governments cannot long exist. I do not wish to take up the time of the Convention. I will not therefore enlarge.

Mr. Clark—I am not prepared to vote on this, Mr. Chairman. There may be some truth in this proposition which I should like to examine into before I vote. If the gentleman means no more than is conveyed in the amendment, I agree with him.—That we relinquish no rights as individuals when we enter into society is true. Every right which I have as an individual I have in society. This is an abstract proposition, and yet when the gentleman contends that man does not *surrender* certain rights, only the mode of securing or protecting them does he not give up certain rights? The right for instance, of redressing wrongs, which he has by nature, we give that up when we enter society into the custody of the law. Where shall we draw the line? If as an individual I have the right to redress my wrongs, and surrender that to the Law, the power is changed and in some degree the right is surrendered. But I only surrender the power, and how shall we draw the distinction. It is an abstract proposition, and it is too late to incorporate such a provision into the Constitution or Bill of Rights. I go against it as unnecessary, as whatever is material is embraced in the Bill.

Mr. Hornblower.—I contend Mr. Chairman that there is no truth in the assertion. It is a pure abstract proposition, and no possible advantage can be derived by incorporating it here. If we were to go on and engraft these abstractions, we should make the Constitution as long as the moral Law. The gentleman quotes the authors he has read on

this subject. So could I refer to doctors and professors to maintain any variety of opinions, and after all a man would be no wiser when he left off than when he began. I have no idea of spinning out these abstract propositions in the bill of rights. Besides it is not true. If a man is in a state of nature, he has a perfect right to go where he chooses. To take his bow and arrow and shoot his game where he chooses. There is no property in the state of nature, no boundaries, no owners. But when I enter into society do I not give up the right to go on my neighbors' lands, when and where and how I choose, and do as I choose? It is idle to say a man does not give up his rights, these principal rights which exist in a state of nature, if there is any such state. I really hope the Convention will not waste its time discussing or adopting the abstract principles of this kind, and spreading them out on the Constitution.

And on the question, shall the amendment be agreed to? the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Jaques, Mickle, Pickel, Naar—4.

Nays. Mr. Allen, Bell, Brick, Cassedy, Cattell, Child, Clark, Condit, Connolly, Dickerson, Ewing, Field, Gilchrist, Haight, Hibbler, Hornblower, P. B. Kennedy, R. S. Kennedy, Lambert, Marsh, Neighbour, Ogden, Parker, Pitney, Ryerson, Schenck, Stites, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Williamson (pr.), Wills, Wurts (v.p.), Zabriskie—39.

The same section being still under consideration,

Mr. Gilchrist moved to amend the same, by striking out the words "inherent in", and inserting "derived from." "I do not believe sir, that *political* power is inherent in the People, it emanates from them, may be conferred by them, is the result of their action, and exists in Government—it is therefore *derived* power, and not *inherent in* the People. I am aware sir, that popular usage may give to the words, the same meaning that is given to the substitute I have offered; but as we are framing a Constitution, I am desirous that it should not only contain correct principles, but that they should be expressed with critical accuracy.

Mr. Clark and Mr. Hornblower supported the amendment, and it was not agreed to.

The section, as amended, was then adopted.

The third section being under consideration,

Mr. Stokes moved to amend the same, by striking out the word "ministers", and inserting "ministry";

Which was agreed to.

The section, as amended, was then adopted.

The fourth section being under consideration, the same was adopted, without amendment.

The fifth section being under consideration, the same was agreed to, without amendment.

The sixth section being under consideration, the same was adopted, without amendment.

The seventh section being under consideration, the amendment made to the same, in committee of the whole, was agreed to.

Mr. Ogden moved to strike out the word "sums", in the amendment made in committee of the whole, and insert the words "matters in dispute";

Which was agreed to.

The section, as amended, was then adopted.

The eighth section being under consideration, the amendment made to the same in committee of the whole was agreed to; and the section, as amended, was then adopted.

The ninth section being under consideration, the same was agreed to, without amendment.

The tenth section being under consideration,

[G]Mr. Hornblower moved to amend the article declaring that "no person shall be twice put in danger of punishment for the same offence" by adding a clause [A]offered in Committee of the Whole, [G]excepting cases in which a verdict against him had been set aside or a trial had not resulted in a verdict. [A]Eminent gentlemen on this floor had differed on this very point, and he thought it ought to be settled at once. Mr. Hornblower repeated the arguments advanced in Committee of the whole and Mr. Vroom reminded him that this had been well settled in the case of State *vs* Paul; where the question was deliberately sent up as to whether the prisoner had been put in danger, when the Jury had not agreed. The Court decided that a re-trial, would not be putting him in jeopardy a second time for the same offence.

Mr. Parker said the section was taken from the Constitution of several states, where a first trial was defective or irregular, it was settled that it was no trial at all.

Mr. Hornblower insisted that this was not settled in this state, and as it might obviate difficulty and save argument, why not insert the amendment.

Mr. Vroom suggested that if this was to be considered an open question, the amendment did not go far enough.

Mr. Field. Would not the provision in the Constitution of Rhode Island meet all the objects to be attained—viz that no person after acquittal should be tried a second time for the same offence?

Mr. Vroom thought the amendment [un]necessary and was attempting to give a different construction to the words, which had a settled meaning. It is in fact saying that the provision in other constitutions does not mean what you thought it did. It was unnecessary and cumbering the Constitution, as it was well settled that a man after acquittal would not be tried again, and it was equally well settled that where a trial was broken off by any irregularity or by reason of a jury not agreeing, that the party in a legal sense had not been put in jeopardy.

Mr. Vroom again cited the case of the state of New York *vs* Gordon, in which the jury having disagreed were discharged, and there this same principle was settled, that he was not in jeopardy in a sense to exonerate him from a second trial.

Also the case of the U. S. *vs* Pierls, in which the same question came up and was settled by the U. S. Supreme Court—also the case of the King *vs* Edwards, in which a juror was taken sick, and that jury was discharged, another empanelled and the prisoner convicted. In one point of view he had no objection, but it looked as if we considered that clause in the Constitutions of our Sister states unsettled.

Mr. Hornblower. It is unsettled.

Mr. Vroom. I consider it definitely settled, and if we were to introduce this, it would be by way of interpolating and explaining what the Judges who have decided this, mean.

Mr. Hornblower again advocated the amendment, and insisted that he should not like to be called on as a Judge to order a new trial where a jury had disagreed, or where a trial was broken up from any cause whatever, with this constitutional provision staring him in the face.

Mr. Parker insisted that the section was already sufficiently explicit.

[J]Mr. Field moved to amend the same, by striking out the words "be twice put in danger of punishment for the same offence", and inserting, in lieu thereof, "after an acquittal, be tried for the same offence."

[A]Mr. Ogden thought if we could settle the question it was our duty to do so.

Mr. Child thought that Mr. Field's amendment would cover the whole ground, and Mr. Hornblower accepted it. The previous question being called by Mr. Child it was agreed to ayes 26 and the section was adopted, as amended by Mr. Field.

The eleventh section being under consideration, the same was agreed to, without amendment.

The twelfth section being under consideration the same was adopted, without amendment.

The thirteenth section being under consideration, the same was agreed to, without amendment.

The fourteenth section being under consideration,

Mr. Dickerson moved to amend the same, by adding the words "and no punishment for treason shall exceed fine and imprisonment";

Which was not agreed to.

The section was then adopted, without amendment.

The fifteenth section being under consideration,

On motion of Mr. Child, it was

Ordered, That the same be stricken out, as it is in the Legislative Report.

The sixteenth section being under consideration, the same was adopted, without amendment.

The seventeenth section being under consideration,

Mr. Cassedy moved to amend the same, by inserting between the words "be" and "made" the word "first."

Mr. Marsh inquired if this would reach the case of a public highway. If it has, I shall be against it, as much inconvenience may be caused thereby.

Mr. Vroom. It strikes me it has no application to public roads. A certain per centage of all lands is reserved for public highways. I think the interest of the community and of individuals would be better served by having this word inserted, that persons or corporations should be compelled to pay first for the land, the amount which may be assessed, and not permit them to go over the land of an individual, leaving him to get his remedy where he may, leaving him too to the tender mercy of these corporations, and it is no very tender mercy either. I can not see how any of the difficulties could arise which have been suggested. The case of war has been referred to, but then property if taken at all would be taken as a matter of public exigence, public necessity, but that it is not the case with what are termed public improvements. I think the amendment would operate beneficially.

Mr. Marsh. I have no objection to the introduction of the word so far as it applies to Rail Roads or Canals, but when it is construed to apply to public highways, I think there would be difficulty.

Mr. Vroom. This does not apply to public highways at all. It is only where private property is taken for public uses.

Mr. Ogden. When the question was before us in the Committee of the Whole, this same question was asked, and I understood that it was applicable to public highways.

Mr. Child—If it does not reach public highways, or prevent the useless laying out or altering or widening of streets, I do not see the use of it at all. The Legislature would provide for all contingencies in the case of chartering Rail Roads or Canals. My idea is that it was or should be equally applicable to roads and streets. A man's property may now be utterly destroyed by laying out or altering a street, and he has no remedy and it is against abuses of this kind I wish to guard. The Legislature will take care of other cases.

Mr. Hornblower.—I do not see Mr. Chairman, why it should not apply to streets or roads. Suppose a man has a lot thirty or forty feet in width just wide enough for a street, and one is run through it and his property taken away, where is his remedy? The Legislatures of some of the States foreseeing the troubles that would arise from this, have made provisions that streets should not be laid out, or altered or widened without assessing the damages and compensating persons whose property may be injured or destroyed.

Mr. Ryerson suggested that the question before the Convention was simply on the motion to insert the word *first*, and not whether the section was applicable to public highways. The idea was that in all cases, compensation should be first made before land should be taken for public purposes.

Mr. Naar was decidedly in favor of the principle, and thought it no more than just that compensation should be first made for land thus taken, and that the party should not be turned adrift in the Courts to seek his remedy.

Mr. Allen said that it was doubtless applicable to streets, and it was not the intent of the Report that valuable land should be taken for streets and no compensation made therefore.

Mr. Field. I do not care Mr. Chairman whether this applies to public highways or not. My objection to the amendment is, that if this is incorporated in the Constitution, it will be impossible to construct Rail Roads or Canals hereafter. How will it be possible, if you make it obligatory for the company to pay beforehand for the land which may be necessary to construct it. Suppose an owner should choose to charge an exorbitant price for his land.—Commissioners are called on, and they award what they deem a fair compensation. He appeals from their decision, and he may by carrying it from Court to Court, delay three or four years, before a final decision is had, and all this time the

Company must cease operations. The roads and canals we now have, never could have been constructed had there been such a provision in the Constitution.

Mr. Parker objected to the introduction of the word, and contended that manifest injury might accrue to the public. In many cases it would be impossible to ascertain the amount of damage until the work was completed. It was not necessary to incorporate such a provision in the Constitution as it had already been in force for nearly thirty years.

Mr. Vroom. The gentleman from Middlesex (Mr. Parker) is mistaken when he says this provision has been in force 30 years, that compensation should be made before the land is taken. I take it to be otherwise. (Mr. Vroom here read from the charter of the Camden and Amboy Co. on this subject.) By this charter I find that the Company are required to give notice that the land will be required. Commissioners are appointed who assess its value, and the report is filed, and as soon as that is filed it gives them a title, a fee simple in the property.—Not when the money is paid, but when the report is filed—then the title is vested in the Company, and they go on with the work. If they do not pay within 20 days after demand is made, the party may sue them, and if they are not satisfied with the result they go to a higher court. The humble individual contends with a company of millions at their command. But there is a further provision that their failure to pay creates a lien in the nature of a mortgage. Well, what can he do with that. He may go in the Court of Chancery and have the tolls registered after all expenses and charges on the road are paid, and what would that amount to in the case of many of the Rail Roads in this State? Gentlemen look at this from one side, I look at it from the other. They say they require the property for public use and benefit. I say it is for private emolument. They lay out their roads as they choose.—They go through a man's farm. They go between his house and his barn; and the owner is perhaps actually driven out of his land. What I desire is that this shall not be done until compensation is first made, and not compel a man to part with his land, and get for it promises, or a lien which is worth nothing, or a right of action. That is no equivalent at all. The Company may be bankrupt, and what then—or it may be utterly unprofitable, and what is his mortgage worth then. Take the Delaware and Jobstown Rail Road, or the Somerville Road.

Mr. Williamson—On that Road there is a special provision that the land must be paid for before it can be taken.

Mr. Vroom—There may be such a provision, but I know of many who have not been paid yet.—The Commissioners fixed the value so

low the owners could not without injustice accept of it, and they have been forced to go into litigation to obtain their rights. Suppose one of these corporations had been delayed in prosecuting their work for a provision of this kind. I ask where would the public interest have suffered. In some States, I acknowledge they carry this too far. In New Hampshire they cannot take land for such purposes unless the owner will consent to receive compensation for it.

It is now settled that a private corporation may take the land of an individual, on the consideration that it is for the public use and benefit, but I insist that compensation should first be made.

Mr. Pickel called the previous question but it was not seconded.

Mr. Cassedy said the people in Bergen County were very sensitive on this subject. There were two Rail Roads chartered to run through that County and they were fearful their lands would be taken without compensation.

Mr. Ogden reminded the gentleman that the charters of both companies contained a special provision that compensation should be made, before any land was taken.

Mr. Parker insisted that an issue was raised here, which did not belong to the question at all. He was not in favor of allowing Rail Roads or Canals to run over a person's land without compensation, but he contended that by compelling them to make compensation first, great injustice might be done.

Mr. Marsh again briefly opposed the amendment having special reference to public highways.

The P. Q. was again called [G]by Mr. Ryerson [A]and being seconded, [G]the main question was then ordered. Mr. Cassedy asked for the yeas and nays, and the amendment was not agreed to, [J]as follows, *viz:*

Yeas. Mr. Allen, Cassedy, Child, Connolly, Ewing, Haight, Jaques, P. B. Kennedy, Lambert, Mickle, Naar, Neighbour, Pickel, Ryerson, Sickler, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Wills, Wurts (v.p.), Zabriskie—22.

Nays, Mr. Bell, Brick, Cattell, Clark, Condit, Dickerson, Field, Gilchrist, Green, Hibbler, Hornblower, R. S. Kennedy, Marsh, Ogden, Parker, Parsons, Pitney, Schenck, Spencer, Stites, Stokes, Stratton, Swain, Ten Eyck, Williamson (pr.)—25.

[A]Mr. R. R. Thompson wished to offer an amendment but the Chair decided that the P. Q. precluded him.

[J]The seventeenth section being under consideration, and the question being on agreeing to the same,

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *vis*:

Yeas, Mr. Bell, Brick, Cassedy, Child, Condit, Ewing, Field, Gilchrist, Haight, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Lambert, Marsh, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Ryerson, Sickler, Spencer, Stites, Stokes, Stratton, Swain, J. R. Thomson, Vanarsdale, Williamson (pr.), Warts (v.p.), Zabriskie—35.

Nays. Mr. Allen, Cattell, Clark, Connelly, Dickerson, Green, Hibbler, Schenck, Ten Eyck, R. P. Thompson, Vroom, Wills—12.

Mr. R. P. Thompson offered the following, to be inserted as Sec. XVIII:

"Nothing in this constitution shall be construed to require payment to be made for land taken for public highways, unless the legislature shall otherwise direct by law";

Which was disagreed to.

The eighteenth section being under consideration,

Mr. Ryerson moved to strike out the word "is", and insert the word "be" [before "strong presumption of fraud"].

[A]Mr. Bell inquired if this extended to fines.

Mr. Child made the same inquiry.

Mr. Williamson. I think not.

[Mr. Ryerson's motion] was agreed to.

On motion of Mr. Dickerson,

The section was further amended, by adding thereto the words "either in contracting the debt, disposing of his property, or concealing the same."

[A]Mr. Hornblower said he hardly dared to offer an amendment lest he should be considered as opposed to non-imprisonment for debt. But he must say the clause was very unmeaning and unsatisfactory as it stood. What is to be the practice under it? This is a general declaration, which can never be carried out, except in such legislative form as may be adopted. It is introducing an unnecessary and unmeaning article which can never as it stands secure any result or corresponding benefit.

[C]Mr. Ryerson having voted for the amendment, moved to reconsider, because we had now tied up the hands of the legislature to three cases of fraud. There might be fraud in other ways, and he wished to leave full power to the legislature to reach all kinds of fraud. The motion was not agreed to.

[A]Mr. Allen moved to strike out the whole section, not because he was opposed to non-imprisonment for debt, but because he thought it should be left to the Legislature as many details must necessarily be

gone into. It was not an original report. It was an amendment suggested in Committee of the Whole, and now before the Convention for adoption.

Mr. Cassedy moved to strike out the word, *estate* and insert *property* which was agreed to.

Mr. Gilchrist inquired what was the meaning of the words "for the benefit of his creditors."—Suppose a man owed him $500 and refused to pay him or make an assignment, could he imprison him?

Mr. J. R. Thomson said it had not been his intention to have taken part in the debate on this subject, but the remarks of the gentleman from Burlington rendered it necessary that he should say a few words. That gentleman had sought to excite a prejudice against the article, on the ground of its not being contained in the original report of the special Committee on the Bill of Rights and Privileges. This was true—it had not been reported by that Committee. But did the fact of its being submitted by a member in Committee of the Whole, entitle it to less consideration on that account, provided it was in itself a proper and necessary amendment? By no means. It was not so considered in that Committee, but was adopted by [a] very decisive vote.—The provision, without regard to the source from whence it came, must stand or fall on its own merits. Gentlemen have professed for it a great deal of friendship—have admitted that no person should be imprisoned for debt, while their acts evince a decided hostility to the adoption of such a provision in the Constitution. Where such a contradiction is found, it is submitted whether there may not be good ground to doubt the sincerity of their professions.

It has also been charged that the introduction of a Constitutional provision in regard to imprisonment for debt, is a novelty. A novelty! Is this true? Have not nine states engrafted it in their Constitutions, in the Bill of Rights? And yet it is called a novelty!

It is also said that the matter may be safely left to Legislative discretion—that there is no danger that imprisonment for debt shall ever be authorized by a law of New Jersey. This is a subject which should not be left to Legislative discretion. But if the sense and feeling of the public are so opposed to imprisonment for debt, and it be admitted to be wrong in principle, and that no Legislature would ever adopt it, why, I ask, then, is it so strenuously opposed as a Constitutional provision? Why object to incorporate in the fundamental law a provision admitted by all to be right? It is difficult to reconcile such opposition to sincerity of professions in regard to it.

It has also been said that the adoption of this article would array

a large body of our citizens against the ratification of the Constitution. But I submit that its rejection would array a far larger force against it. Since the time of its adoption in Committee, I have met with very many persons, and have corresponded with others, and I maintain that there is no one feature in the Constitution which has met with such general favor.

Mr. Ogden was in favor of declaring the principle of non-imprisonment.

[Mr.] [G]Marsh advocated the amendment.

Mr. Ewing said he was opposed to imprisonment for debt, but the amendment as amended, seemed to him a very grudging one, and he should therefore go against it.

[A]Mr. Child withdrew his second to Mr. Allen's motion lest he might be understood as opposed to non-imprisonment, and Mr. Ewing did the same.

Mr. Hornblower was desirous that no man should be imprisoned on presumption and he moved to strike out the words "unless there be strong presumption of."

Mr. Ryerson said this would be killing it with kindness, if this amendment prevailed.

Mr. Gilchrist again asked what would be the operation of this. If a man owed him $500 and he sued him and he refused to make an assignment, could he imprison him!

He said, I do not like the section as it now stands. I think if a little time was allowed it might be vastly improved. I am, and always have been, in favor of abolishing imprisonment for debt, except in cases of fraud, but my fear is, that the section as amended, will not accomplish that object; nevertheless as other gentlemen in whose opinions I have great confidence, think it will, and the vote must be taken without further debate, I shall vote for it, as it is.

Mr. Ogden said the Courts would regulate that. The Legislature must provide for details.

Mr. Hornblower's amendment was not agreed to.

Mr. Green. I suggest Mr. Chairman whether this principle is as broad as the gentleman intended it should be. I want the broad principle laid down that there shall be no imprisonment for debt at all. I hold to the doctrine that there shall be no imprisonment for debt. You perceive as the section now stands you do not imprison for debt, you imprison for fraud. I would prefer the section if it was otherwise worded, and I offer as a substitute, [J]striking out all after the word debt, in the first line, and inserting the following: "but provision may be made by law

for compelling a debtor to surrender his property for the benefit of his creditors, or for the punishment of fraud committed by the debtor."

[G]Mr. Green said he should go for the article; but he preferred this substitute.

Mr. Naar seconded Mr. Green's substitute.

Mr. Vanarsdale opposed Mr. Green's substitute, that it would prevent all imprisonment, even for the fraud.

Mr. Green advocated the substitute, and Messrs. Field and Marsh opposed it.

[A]Mr. Field thought Mr. Green was hypercritical. The term non-imprisonment for debt was opposed to imprisonment for crime. When a party refuses to deliver up his property for the benefit of his creditors or is guilty of fraud in contracting a debt or in concealing or disposing of his property, he is imprisoned for the debt [crime?].

[Mr. Green's amendment] [J]was disagreed to.

The question then recurring upon the adoption of the section, as amended,

The yeas and nays were demanded, and

It was determined in the affirmative, as follows, *viz:*

Yeas. Mr. Brick, Cassedy, Cattell, Child, Clark, Condit, Connolly, Ewing, Field, Gilchrist, Green, Haight, Hibbler, Hornblower, Jaques, P. B. Kennedy, Lambert, Marsh, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Ryerson, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Swain, J. R. Thomson, R. P. Thompson, Vanarsdale, Wills, Wurts, Zabriskie—40.

Nays. Mr. Allen, Bell, Dickerson, Ten Eyck, Williamson (pr.)—5.

The nineteenth section being under consideration, the same was agreed to, without amendment.

The twentieth section, which was added in committee of the whole, being under consideration, and the question being on agreeing to the same,

Mr. J. R. Thomson moved the following, as a substitute:

"This enumeration of rights shall not be construed to impair or deny others retained by the people";

Which was agreed to.

On motion of Mr. Ewing,

The convention adjourned till to-morrow morning, at nine o'clock.

J Tuesday morning, 18th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Young.

A The minutes of yesterday were read and Mr. Green announced that the amendment offered by him to the 18th section did not appear on the minutes at all, and he thought there ought to be a record of what actually did take place.

Mr. Cattell said it was not the practice to insert on the minutes any amendments which were rejected unless the ayes and noes had been called.

Mr. Randolph thought in so important a matter as this, everything should appear on the minutes. The construction hereafter of some word, which was in the Constitution, and which was proposed to be changed, the minutes would if correct, afford a clue to the meaning of the framers.

Mr. Zabriskie moved to adopt the practice of the House of Assembly.

Mr. Randolph moved that any amendment should be entered on the journal at the request of one fifth of the members.

Mr. Parsons suggested that the 7th rule covered every thing.

Mr. Green said a gentleman might often be placed in a very false position by this course. Every gentleman ought to have the privilege of having his motion on the Journal, whether the ayes and noes were called or not.

Mr. Pickel thought this would be uselessly encumbering the minutes, and adding great labor to the Secretary.

Mr. Parker read from the Convention of New York that the practice was to enter all amendments.

Mr. Zabriskie having withdrawn his motion,

On motion of Mr. Ryerson, it was

Resolved, That every motion or amendment on which a vote of the convention is taken, be inserted on the minutes.

The minutes of yesterday afternoon were then ordered to be amended accordingly.

On motion of Mr. Vanarsdale, it was

Resolved, That a committee of five be appointed to arrange and write the several reports, as acted upon by the convention, and present them in a connected form for consideration, with power to alter or amend the phraseology, without altering the meaning of the several reports.

A Mr. Clark then moved a reconsideration of the vote of yesterday upon the 18th section of the Bill of Rights, G in relation to imprisonment for debt.

A He said: My motive in offering this Mr. Chairman is that I am opposed to imprisonment for debt, and because this section actually encourages it, while it denounces it. I am satisfied that this was not the design of the mover, and I doubt not that such is the sentiment of this Convention. I will now proceed very briefly to explain how in my opinion it operates as I have said. (Mr. Clark here read the section.) Here it is clearly established that a man is liable to be imprisoned on presumption of fraud. Is this the design of the Convention? It certainly so operates unless we alter the article. What is to give birth to this presumption. The Justice of the peace establishes the fraud. Every Justice of the peace will thus become a medium for the incarceration of Defendants. In nine cases out of ten, the Justice of the peace takes the plaintiff's view of the case. He receives the impressions of the plaintiff and under the idea of their truth he establishes the truth of every presumption stated by the plaintiff. When we come to a trial by Jury, the plaintiff produces this Constitution. The court charges that the Jury have only to find a presumption of fraud to authorize the imprisonment of the defendant—What do the jury find—not fraud certainly, but only presumption of fraud. It is sir the very broadest door you can open for imprisonment for debt—We have ordained and established the common law, and have adopted this benign principle, and yet this section says a man's liberty may be taken from him on presumption. One part of this Constitution thus conflicts with the other. We certainly do not mean to tantalize the citizens by pretending to abolish imprisonment for debt, while we are actually opening the door for it. All we can do is to assert the great principle. If we wish to strike at fraud, that is covered by the term "unless in cases of fraud." I therefore propose the substitute I have offered, and I do it, that the constitution may not be inconsistent, and that we may accomplish the ends we desire to obtain.

Mr. Zabriskie said he would second the proposition with great pleasure, as he fully accorded with the views just taken by the gentleman from Hunterdon.

The section was then reconsidered, and was again under consideration.

J. R. Thomson.—It seems to me Mr. Chairman that all the members are in favor of this principle, and yet somehow or other it has been more embarrassed by amendments than any other which has been offered. Some discover difficulties in one way some in another. I offered

the section, and I thought it perfectly safe to adopt the same language which I find in the Constitution of other States on this subject. [He] [G]was called to order on the ground that the previous question was yesterday ordered on this section.

Mr. Ryerson called the yeas and nays on the question of agreeing to the section; and they were ordered; and the section was not agreed to, [J]as follows, *vis:*

Yeas. Mr. Brick, Cassedy, Child, Condit, Connolly, Edsall, Fort, Haight, Hibbler, Holmes, Lambert, Marsh, Mickle, Neighbour, Ogden, Parsons, Pickel, Pitney, Ryerson, Swain, J. R .Thomson, Vanarsdale, Wills—23.

Nays. Mr. Allen, Bell, Clark, Dickerson, Ewing, Gilchrist, Jaques, P. B. Kennedy, R. S. Kennedy, Naar, Parker, Randolph, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Ten Eyck, Williamson (pr.), Wood, Wurts (v.p.), Zabriskie—23.

Mr. Clark then offered the following, to be inserted as Sect. XVIII:

"No person shall be imprisoned for debt, unless in cases of fraud."

Mr. Ryerson moved to amend the same, by striking out all after "debt", and inserting "in any action, or on any judgment founded upon contract, unless in cases of fraud."

[A]Mr. Vanarsdale suggested that the whole difficulty might have been avoided by striking out the words, *where there is strong presumption of fraud.*

Mr. P. B. Kennedy then moved to insert in Mr. Clark's substitute after the word debt "founded on contract," which Mr. Clark accepted.

Mr. Stokes opposed the amendment as going too far.

Mr. Ryerson explained the operation of the amendment.

Mr. Stokes.—I should like to know if this operates to prevent imprisonment for militia fines.—There are many persons in my section of the country who are conscientiously opposed to this system, and as they have no property to satisfy a fine, they are taken and shut up in prison and are at the mercy of militia officers to order their release. I had thought that the substitute would cover all these cases, but this amendment will shut out this class from all relief or benefit of this provision, and I hope the substitute will stand as it is.

Mr. Clark.—The design is to abolish imprisonment for debt co-extensive with the provisions of the Statute. It applies to all fines and penalties except such as may be incurred in criminal prosecutions. The term debt is not used in its technical but in its broadest popular sense. Suppose a party is served in an action of trespass and judgment is recovered against him. As soon as judgment is recovered it becomes a

debt of judgment. In a case of seduction, or in any other case in which damages might be recovered, the same principle would operate, and the substitute would apply. In this view then, I do not see as I did right to accept the amendment, and I withdraw my acceptance. If this amendment is engrafted on it, we have it open to incarcerate a man for a debt of damages. I hope the substitute will stand as it is.

Mr. Ryerson.—If the gentleman refuses to accept the amendment, I renew it. A man who commits an outrageous trespass, would be held liable for it, and if his property will not respond to it, his person must. If I give a man credit, if I trust him and he refuses to pay me, it is my own fault if I lose the money. But if he enters my house and commits a trespass, if he invades the sanctity of my home and commits an outrage on my wife or my family, ought he to be suffered to go clear and laugh the Courts to scorn? It is true gentlemen may say, I have an indictment. That is a remedy for the public wrong, but will that satisfy the wronged & outraged feelings of an individual. What would the right of personal security be worth if you adopt this provision in the Constitution? I renew the amendment sir, and hope it will prevail.

Mr. Ogden moved to amend by inserting "or in any judgment founded on contracts."

Mr. Clark—My design sir was to go as far as the Statute has gone heretofore. I supposed that the idea of the Convention was to go only so far, and that that was to be engrafted as a principle in the Constitution. Our Statute as first enacted only excepted debtors on contracts, not those liable as damages, and this was afterwards extended so as to apply to these also. I mean only to go as far as the Legislature has gone and no further.

Mr. Ryerson.—Does not the Legislative enactment extend to cases of contract? Cannot a man who commits a trespass be arrested, and, cannot a causa be issued to take his body.

Mr. Child inquired if the Legislature could not regulate all this, he was willing to leave it to them.

Mr. Hornblower.—This, Mr. Chairman is a most important subject. We all know that originally in this State, persons applying for the benefit of the insolvent laws were only to be discharged from imprisonment on debts formed on contract. That was as far as the law then extended. But I remember well when it was changed. It was owing to certain interesting events which transpired 20 or 30 years ago, when the Legislature was induced to extend the insolvent laws to cases of persons imprisoned for damages. Whether incurred in an action for assault and battery—for destroying the prospects of a person, for out-

raging the purity of a wife or a daughter, by this amendment all these were entitled to their discharge, and so it has remained until the present day. And therefore as the gentleman from Morris says if a man is mulcted in damages for any of these offences, no matter how notoriously guilty he may be, he may be discharged as an insolvent debtor. The Legislature who framed the present law have preserved that distinction, and it extends now only to debts *ex contracto*. Since that law has been passed, I have granted but one order to hold to bail, and I believe that my associates on the bench have not granted more than one apiece. But there are as many as ever held to bail in actions for crim. con., for slander, for seduction, and for violent trespasses on private rights. If the object is to except such as these from imprisonment, I cannot go for it, and will not for the amendment of the gentleman from Sussex (Mr. Ryerson). I am willing to abolish all imprisonment for debt *ex contracto*. But I don't mean to abolish it in such cases as I have cited. I do not mean that such men shall be considered as unfortunate debtors. I have seen cases of the most outrageous seduction by rich young men, where verdicts of $1500 have been rendered against them. They have laughed at it. They have gone to jail, and received their discharge as unfortunate debtors. I am willing to have this broad principle laid down. Imprisonment for debt shall be abolished, but I am not willing to say that a man guilty of such offences shall be exempt from imprisonment.

Mr. Naar. I am opposed Mr. Chairman to the amendment of the gentleman from Sussex. I voted against the section in the report, because I expected that something better would be substituted, but as soon as that section was rejected, gentlemen spring on us some new propositions growing out of the legal definitions. If the substitute is adopted as it is offered, the Legislature may define what is the meaning of the term debt. I do not care whether it is a debt ex contracto; or ex delecto or any other ex, I go for this principle, and I believe that every member goes for it, that there shall be no imprisonment for debt in the sense that the people understand it. The amendment I consider as very ill placed.

Mr. Ogden. It is for the very purpose that the people may understand it, that the amendment is offered. I should be very sorry that the Constitution should go to the people with a provision which would bear the construction that a man who commits a violent assault and battery, the seducer, the trespasser, should walk the streets and set the injured parties at defiance. Nor do I want them eternally incarcerated. We have had insolvent laws for many years, and by a supplement in

1818, they were extended to debts or damages or to any case where a party was amenable for a transgression of the civil rights of another, and in such cases where he had no means to respond, he was to ride quarantine for 40 days, and then go loose again upon society. I do not want it to go forth to the people, that a judgment in such a case is not to constitute a debt.

Mr. Zabriskie moved the previous question, but it was not seconded.

Mr. Ryerson. The gentleman from Essex says the Courts will put a construction on the section so that a trespasser cannot be arrested for debt. If we are going to put in a section that will let the trespasser, the seducer, and such persons go at large, I shall go for no such provision. You may call the ayes and noes as often as you choose, and my vote will always be found recorded in the negative.

Mr. Green—I feel, Mr. Chairman, that I am here, as well as the other members of this Convention, to prepare a Constitution in honesty and good faith. Not such a Constitution as will make political capital, and under this conviction, and after the most deliberation, I offered the amendment yesterday, and I must say, I regretted to notice the reception it met with. I rejoice that the Convention have consented to receive the amendment of the gentleman from Hunterdon, and if there is to be any clause of this nature in the Constitution, I prefer one so broad as this is. I said yesterday that I was opposed to imprisonment for debt. It is practically abolished in New Jersey now. [G]It has been, in effect, banished from your statute books for years. [A]The sentiment of the people—the spirit of the age is against it, and the only question now left is, how are you to reach fraud? Gentlemen who honestly wish to qualify, ask how are you to compel a man to give up his property? I answer, let the Legislature provide for that by attaching the property. Earnest petitions on this subject have from time to time been presented. Instead of a capias to take the body, take out an attachment to seize the property, [G]as is done in New England. [A]The object to get at the property by imprisoning the body, cannot be attained. The Chief Justice says he has only granted one order for arrest in three years, but I ask members has there been no fraud in that time. In my own practice since the present law has been in force, I have not issued one capias, and a conscientious plaintiff cannot now sue out a capias under this act. I appeal to the members of the bar who hear me. I appeal to the magistrates, has the law attained the end which the legislature intended? My idea is this. If we insert this broad principle in the Constitution, then, and not till then, will there be some fair mode of getting at the property of a debtor.

Suppose a man who owes you $10,000 comes to you and says I am going to leave the State, I don't intend to pay you. Where is your remedy? You must get a charge of fraud, and how are you to do it? This imprisonment of the body to get at fraud is worse than idle and you retain a feature which is worse than useless. [G]I appeal, sir, to the learned Chief Justice, to say whether the present law has attained its object.

Mr. Hornblower. No sir.

Mr. Green. I appeal to every magistrate on this floor, to every lawyer. I appeal to you, Mr. Vice President, to say whether the law has not failed to accomplish its object. The right to arrest the person has been retained, in certain cases, with the view of detecting and preventing fraud, but all experience has shown that it has failed to accomplish that object.

Put on your Constitution the broad principle that there shall be no imprisonment for debt. Then some means will be devised by the legislature to reach the property; but not through this delusive means of imprisoning the debtor. Let there be no imprisonment in New Jersey, except for crime. Let no capias for the recovery of a mere debt ever issue directing the constable, that unless he can find property, he shall take the body.

Let us meet the question boldly, and let it be understood that there shall be no imprisonment for debt, but that the legislature may provide means of reaching the property of debtors; and if experience shall show that it won't answer, there is a clause in your proposed Constitution providing for future amendments. Means for reaching the property can be devised.

He would vote for the amendment of the gentleman from Sussex. It went as far as the legislature had gone. It protected every man from imprisonment for debts voluntarily contracted. In regard to damages for wrongs committed against other citizens, it may be going too far, to extend the section to such cases.

He felt no solicitude on this point, but he was solicitous that the Convention should declare the great principle that there should be no imprisonment for debt without the qualification contained in the resolution of the gentleman from Hunterdon.

[A]Mr. Child. Suppose the substitute is adopted without the amendment what will become of debts originating in damages. Would there be imprisonment for such debts, for defamation of character, for trespass or the like, where damages had been recovered?

Mr. Hornblower. The recovery is in damages. That becomes a debt

of judgment.

Mr. Green. I believe I understand what the gentleman means—as for this amendment I shall vote for it. It goes as far as the Legislature has gone and that seems as far as we ought to go. The great object has been to abolish all imprisonment of the body for debt, which a man has contracted and to which he is unable to respond. If you leave the substitute as it is, it will redound to the honor and credit of the state, but I shall vote for it, with or without the amendment.

[G]Mr. Williamson said if the amendment of the gentleman from Sussex should be agreed to, he should vote for the article proposed by the gentleman from Hunterdon. If not he should vote against it.—He was clearly in favor of leaving the matter as it is now settled by the law. [According to the Advertiser, "Mr. Williamson said he should vote for the section with or without the amendment."]

[A]Mr. Clark. I am satisfied on reflection that the substitute would leave the Legislature at liberty to declare what should constitute a debt, and as I am not disposed to take that discretion from the Legislature, I have no objection to accept the amendment.

[J]Mr. Hornblower, moved to amend the same, by adding "nor shall any person be imprisoned for a militia fine in time of peace"; [G]which Mr. Clark accepted.

The article proposed by Mr. Clark, as modified, was then agreed to unanimously.

[J]On motion of Mr. Ryerson,

The convention then proceeded to the consideration of the report of the Committee on the Right of Suffrage and of the amendments made thereto, in committee of the whole.

And the first section being under consideration, and the question being on agreeing to the amendment made in committee of the whole, to strike out "an inhabitant", and insert "a resident", the same was concurred in.

The amendment made in committee of the whole to the same section, to strike out "as acquiring a residence", and insert "a resident", was agreed to.

The same section being still under consideration, and the question being on agreeing to the amendment made in committee of the whole, to strike out the words "or pauper",

[A]Mr. Hornblower. When this was up in Committee of the Whole, I voted to strike out the word pauper, and I now move to insert instead, "or persons actually chargeable to any city, town or county, and supported at the public expense."

Mr. Field. I have only to say Mr. Chairman I hope the word pauper will be retained.

Mr. Condit. I think it is a term well known and I hope the Convention will retain it.

Mr. Lambert enquired what was the meaning of the word pauper. The Legislature no doubt would put a construction on it. He knew respectable men, who, borne down by age and infirmity were compelled to receive partial assistance from a town. Were they to be considered as paupers?

Mr. Hornblower. My amendment does not go so far as that.

Mr. Jaques had hoped the word pauper would be struck out and the amendment substituted in its place. This Convention was taking very high grounds. They had made a distinction between white and colored men, but he could not see why the poor should be deprived of their natural rights. A man does not derive his rights from society. He gets them from his Creator and no man would dare to say he forfeits them except by the commission of some crime, and surely it was not a crime to be a pauper, and if pauperism was not a crime, how could they deprive a man of his rights?

Mr. Child said—I am in favor of restoring the word *"Paupers"* to the report of the Committee; and shall now proceed to give my reasons therefor, with all possible brevity.

Nothing (said Mr. Child) is farther from my wish than to deprive any citizen, native or naturalized, of the privilege of voting, except it be for the most obvious and substantial reasons; or to place any other restriction upon the elective franchise, than the public good requires. But, Mr. President, I am decidedly of the opinion that our paupers cannot generally; I go farther, cannot with few exceptions, exercise the privilege of voting freely and independently—that the privilege will be to them a source of annoyance and misery, rather than of comfort and satisfaction; and that the interests of the public demand that they should be excluded.

First then I am in favor of the motion out of regard to the paupers themselves. Should this amendment not prevail, what would be the consequence? Twice every year the doors of our poor houses would be thrown open and their wretched inmates would be brought out. The aged, the infirm, the crippled, nay, the sick would in many cases be taken from their beds of languishing and suffering, placed in vehicles and carried to the polls. Because, if it was done in one county, so nearly are parties balanced, it would be done in others or all. Can you sir imagine any spectacle more melancholy? Can you believe sir

from your knowledge of the character, condition and feelings of the poor themselves, that if the matter was submitted to them they would be in favor of it? No sir, they would not. For my own part, if you desired to get rid of the poor, I do not know a better way to thin their ranks than to expose them to the inclement weather we often have at our Spring elections and not infrequently at our Fall elections.

Again, it would give the keepers of these poor houses and others having charge of the poor great power and influence over the elections. More power than I am willing to trust to any class of men. County elections in the spring, and often the general election in the fall would be decided by the votes of persons under their charge and whose votes they would in a great measure control. I know there would be exceptions, but these exceptions would be too few to vary the general result.

But there would be another evil. The keepers of the poor houses would be chosen in reference to their politics and not as now with regard to their qualifications. Again, sir, no class of men are so little qualified to vote understandingly as the inmates of the poor houses. I speak now of a very large majority of them. They read no newspapers, they hear no political conversations or discussions, they attend no political meetings. Will it be a satisfaction to these people to cast their votes upon subjects of which they can know very little if anything, and at the same time to be subjected to the inconveniences I have named? I think not. Would it be a hardship to deprive them of the privilege of voting? I think not, sir. Nor do I believe it would be so considered by them. Will the public good be promoted by allowing them the privilege? Who can believe it? For these reasons, sir, I shall vote in favor of the amendment, leaving it to the Legislature to determine who are paupers.

Mr. Naar—The gentleman, sir, sets up a probable inconvenience against a great principle of right. Because the keepers of poor houses could perhaps control some few votes, the sacred rights of an individual are to be invaded, and for no fault of his own. Is this the way to establish a Constitution? Because some 20 or 30 men are inmates of a poor house, they are to be deprived of their rights. What reason can be given for inserting the word pauper here at all? The right of suffrage is not a gift. It belongs to every man, and yet this Constitution seeks to deprive him of it; and why is this done? Because, forsooth, he is poor—because misfortune has overtaken him. Should we, sir, add to this misfortune?—should we add injury to it? I hope not, sir. A man is poor because he cannot help it. Does he surrender his rights

for that reason? If he did, he would not go to the polls at all. Many there are who do not wish to vote, who do not care for the trouble and pains it costs them; but again there are many who do wish to go, and it would be cruel and unjust to deprive them of their rights. Besides, there are many men who have surrendered their property to a town in order to derive a support, and are these to be classed as paupers? and will you deprive these men of their rights, because the overseers may drive some of the poor under his charge to the polls and present the appalling spectacle, which the gentleman seems so much to dread. I hope, sir, the word pauper will be struck out, and that these men who have been overtaken by misfortune, shall not be deprived of their rights.

Mr. Hornblower withdrew his amendment.

Mr. Parker asked this question, and he wanted a reply. If no property qualification was required for an elector, for what reason do you refuse to allow a man to vote because he has lost his property? It is very well to talk of expediency, and of the influence which the overseer of a poor house may have. But misfortune is no crime. We are all liable to be overtaken by it, and very many in the poor house may have been driven there by it. A man may have lost a limb in defense of our right, and he may have been compelled to go to the poor house. It is true, he may not read the party paper. He may not attend political meetings, and he may not hear these stump orators who go about telling us what we ought to do, but is he less qualified to vote for that reason? A man may have paid taxes up to the age of 60 years and helped to bear the burthen of a town for all that time, and yet, when in his old age, borne down by misfortune, he is to be deprived of his elective franchise, I hope the word will be struck out altogether.

Mr. Stratton. A pauper has not only lost his property, but he has lost his liberty.

Mr. Cassedy moved to insert *unless he shall have been a revolutionary soldier*, but withdrew it on the suggestion that that might include idiots or insane persons.

The previous question being demanded, there was a second; and on the question,

Shall the main question be now put? it was decided in the affirmative.

The main question then being on agreeing to the amendment, the yeas and nays were demanded, and

It was determined in the negative, as follows, *viz:*

Yeas. Mr. Bell, Connolly, Edsall, Fort, Hibbler, Jaques, P. B. Kennedy, Lambert, Naar, Parker, Pickel, Pitney, Swain, Zabriskie—14.

Nays. Mr. Allen, Brick, Cassedy, Cattell, Child, Clark, Condit, Dickerson, Ewing, Field, Gilchrist, Green, Haight, Holmes, Hornblower, R. S. Kennedy, Marsh, Mickle, Neighbour, Ogden, Parsons, Randolph, Ryerson, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Ten Eyck, J. R. Thomson, Vanarsdale, Williamson (pr.), Wills, Wood, Wurts (v.p.)—36.

The first section being still under consideration, the amendment made in committee of the whole to strike out "of the crime of bribery, forgery, perjury, theft, or other offence for which an infamous punishment is or may be inflicted", and insert "of a crime which now excludes him from being a witness," was agreed to.

The amendment made, in committee of the whole to the same section, by inserting "unless pardoned or restored by law to the right of suffrage", was agreed to.

The further amendment to the same section, to add "The legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of bribery at elections", was agreed to.

The question then being on agreeing to the section, as amended, it was decided in the affirmative.

Mr. Parker offered the following, to be inserted as an additional clause:

"No person alien born shall be entitled to vote until one year after the time of his naturalization."

Mr. Parker briefly explained his views in offering this.

The previous question being demanded, there was a second, and on the question,

Shall the main question be now put? it was decided in the affirmative.

The main question being on the adoption of the additional clause, the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Cattell, Clark, Condit, R. S. Kennedy, Marsh, Mickle, Parker, Schenck, Spencer, Swain, Ten Eyck, Williamson (pr.), Wood—14.

Nays. Mr. Bell, Brick, Cassedy, Child, Connolly, Dickerson, Edsall, Ewing, Field, Fort, Gilchrist, Green, Haight, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, Lambert, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Randolph, Ryerson, Sickler, Stokes, Stratton, J. R. Thomson, Vanarsdale, Wills, Wurts (v.p.), Zabriskie—35.

Mr. Clark offered the following, to be inserted as Article 2d.

"Art. 2d. No person born after the adoption of this constitution shall be entitled to vote under the same, unless he can read the English language, except in cases of physical disability."

Mr. Clark said when this subject was up in Committee of the whole he had offered [this] section which he now called up again.

Mr. Clark was satisfied that this would as it certainly ought to commend itself to the favorable consideration of the Convention. It was a most desirable object to attain, and he believed it could be effected by engrafting this provision in the Constitution.—It would not operate for 22 years to come, and no hardships could be experienced, all minds would be reconciled to it. It would be the first lesson the boy would learn after he had learned his ABC's. He wished to engraft on the Constitution the principle that intelligence and virtue were the pillars of our institutions. The purity of the ballot box would be secured, and every desirable benefit would accrue, while no possible injury could arise.

Mr. Field said that although he did express doubts as to the propriety of this measure when it was in committee of the whole he was in favor of it, because it was a noble sentiment, and he could not without doing violence to his feelings refuse to vote for it.

Mr. Pickel opposed the amendment.

Mr. Stokes said the gentleman had not gone far enough. In saying that the liberties of the people rested on the virtue and intelligence of the people, he ought to have fixed the standard. Intelligence without virtue would be worse than intelligence with ignorance.

Mr. Field—We do fix the standard, sir, to some extent. We exclude all persons from the elective franchise who are stained with crimes.

And the question being on agreeing to the same, the yeas and nays were demanded, and

It was determined in the negative, as follows, *viz:*

Yeas. Mr. Clark, Field, Gilchrist, R. S. Kennedy, Naar, Randolph, Sickler, Stites—8.

Nays. Mr. Allen, Bell, Brick, Cassedy, Cattell, Child, Condit, Connolly, Dickerson, Edsall, Ewing, Fort, Green, Haight, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, Lambert, Marsh, Mickle, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Ryerson, Schenck, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, Vanarsdale, Williamson (pr.), Wills, Wurts (v.p.), Zabriskie—40.

The second section being under consideration, the amendment made in the committee of the whole, by striking out "Legislative Council" and inserting "Senate", was agreed to.

The amendment made to the same section in committee, striking out "twenty-five" and inserting "thirty", was agreed to.

Mr. Parker moved to amend the same section, by inserting after "and", in the third line of the printed bill, the words "a freeholder and inhabitant."

And the question being on agreeing to the amendment, the yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Clark, Condit, Parker, Schenck—4.

Nays. Mr. Allen, Brick, Cassedy, Cattell, Child, Connolly, Dickerson, Edsall, Ewing, Field, Fort, Gilchrist, Green, Haight, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Lambert, Marsh, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Randolph, Ryerson, Sickler, Stites, Stokes, Stratton, Swain, J. R. Thomson, Vanarsdale, Wills, Wood, Wurts (v.p.), Zabriskie—42.

The second article being still under consideration,

Mr. Naar moved to amend, by striking out the whole article, and inserting the following:

"All persons who are or shall be entitled to the right of suffrage, shall be eligible to all offices that are, under this constitution, made elective by the people."

And the question being on agreeing to the amendment, the yeas and nays were demanded, and

It was determined in the negative, as follows, *viz:*

Yeas. Mr. Connolly, Edsall, Fort, Hibbler, Jaques, P. B. Kennedy, Naar, Pickel, Ryerson, J. R. Thomson, Zabriskie—11.

Nays. Mr. Allen, Bell, Brick, Cassedy, Cattell, Child, Clark, Condit, Dickerson, Ewing, Field, Gilchrist, Green, Haight, Holmes, Hornblower, R. S. Kennedy, Lambert, Marsh, Mickle, Neighbour, Ogden, Parker, Parsons, Pitney, Randolph, Stratton, Swain, Schenck, Sickler, Stites, Stokes, Ten Eyck, Vanarsdale, Williamson (pr.), Wills, Wood, Wurts (v.p.)—38.

The same article being still under consideration,

Mr. Ewing moved to strike out the word *"citizen"* in the 6th line, but it was not seconded.

Mr. Condit. I renew the motion I made in Committee of the Whole to strike out *twenty one* in the 5th line and insert *twenty five*. I think this is a salutary provision. Men of 21 years are but boys. It requires some years on the stage of action before their views become settled, and experience teaches us the propriety of limiting the age of our rep-

resentatives to 25 years. Not agreed to on a division—ayes 19, noes, 22.

[J]Mr. Mickle moved to amend, by striking out "twenty-one" and inserting "twenty-three";

And on this question, the yeas and nays being demanded,

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Brick, Cattell, Child, Clark, Condit, Connolly, Dickerson, Hornblower, R. S. Kennedy, Lambert, Marsh, Mickle, Naar, Ogden, Parker, Pitney, Schenck, Stites, Stokes, Swain, Ten Eyck, Vanarsdale, Wills—24.

Nays. Mr. Bell, Cassedy, Edsall, Ewing, Field, Fort, Gilchrist, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Neighbour, Parsons, Pickel, Randolph, Ryerson, Sickler, Stratton, J. R. Thomson, Wood, Wurts (v.p.), Zabriskie—24.

The same article being still under consideration,

Mr. Hornblower moved to amend the same, by striking out "twenty-one" and inserting "twenty-two";

Which was disagreed to, [G]20 to 24.

[J]The question then being on the adoption of the article, as amended,

The previous question was demanded, and there was a second,

And on the question, shall the main question be now put? it was decided in the affirmative.

And on the main question of agreeing to the second article, as amended, it was determined in the affirmative.

The third article being under consideration,

Mr. Randolph moved to amend, by striking out to the word "October" inclusive, and inserting the following:

"The election for members of the Senate and General Assembly shall be held on the first Tuesday of November next, and the day following, and on the second Tuesday of November annually thereafter, or at such other times as may be provided by law for the election of members of Congress or of electors of president and vice president."

[A]Mr. Randolph said that he had offered in Committee, an amendment similar to the one he had just proposed, and he now renewed the motion not for the purpose of reviving discussion but to have the question definitely settled in Convention. He was in favor of the election being held on a single day and the committee had agreed with him in that particular; owing however to the inconveniences, suggested by other gentlemen, that might result from holding the election this year on a single day, without an opportunity of pre-arranging the plans in the large townships for holding elections, he was willing that the next election should be held as heretofore on two days and had so proposed

in his amendment and he was the more willing to this from the fact that the law now required the electoral election to be held on two days and he desired the State election to be held at the same time, which was the object of the second part of his amendment. Mr. R. could see no good reason or propriety why elections coming on the same year should not be held at the same time, he knew it had been urged that elections for State and Federal officers should be kept separate in order that one should not influence the other, but this in his judgment was impossible —was it not notorious that candidates for the Legislature were selected with regard to their opinions on sectional politics? There might possibly be something in the argument, if one election was held in the spring and the other in the fall, but it is proposed that one shall be held in the middle of October and the other the first day of November, some two or three weeks apart, and this surely could not separate the questions although it did the elections—No sir, it will only be testing the same questions twice over, at a very short interval, without any public benefit, nor did Mr. R. believe it desirable to keep up two distinct party organizations, one for the State and the other for the nation—one was sufficient in all conscience. He considered the expense alone a sufficient answer to all objections, add to this the inconvenience to the public, the loss of time and expenses of the people, and the demoralizing effect of the frequent agitation of the same question and the bringing large communities together in a state of excitement, and he thought the proposition unanswerable and hoped that the amendment would prevail.

[G]Mr. Allen moved to amend so as to hold the election after this year, on the 2nd Tuesday of November; which was accepted by Mr. R.

[A]Mr. Zabriskie opposed the amendment. The question of state politics or policy in his opinion, ought to be discussed and considered separately and distinct from questions of the General Government. The difficulty had been to keep them separate, but this would be effected hereafter. This difficulty arose from the appointing power being vested in the joint meeting, and this was always turned to political account, and produced a large influence on the elections at all times. Now we have divested the Legislature of that power, and there will be no probability of operating on elections by its influence. We may now keep the State and General Elections separate, and distinct as they ought to be.

Mr. Randolph modified his amendment by adding, "or at such other time as may be provided by law for the election of members of Congress, and election of President and Vice-President."

Mr. Ogden warmly opposed the amendment, which he said had been already fully discussed. He concurred in the sentiment that it was im-

portant to keep the elections separate and distinct, and he contended that the sentiments of the people were also in favor of so doing. Mr. Ogden argued at some length, and with great ability, in favor of having the elections kept separate.

A motion to adjourn was lost.—ayes 22, nays 24.

Mr. Cattell moved to strike out the word "annually," and insert, *every second year*.

Mr. Marsh advocated having the elections held at once. The object of the amendment is to have this settled, and reserving the right to the Legislature to change it hereafter as they may think best. If the amendment is rejected, the matter is settled and we can only get rid of the difficulty by amending the Constitution. Great stress has been laid on the importance of keeping the elections separate, but how is the case?—The proposition is to have one election in October, and the other in November. Will any gentlemen contend that they are separated? There are only three weeks between them. The time is too short, and the reasons urged do not, I think, justify the rejection of the amendment. An election is a very disturbing matter—every one knows that, and when we have two in such quick succession, the minds of men are totally unfit for any thing else. If we can get rid of this we certainly ought to do it; and certainly we ought to proceed against a cause which would prevent the Legislature from repealing it. If inconveniences should arise, the Legislature would see it, and remove all difficulties. But if this provision is retained in the Constitution, they are left without any discretion.

[J]Pending the consideration of the same,

The convention [G]on motion of Mr. Hornblower [J]adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

Mr. Ten Eyck presented a petition from sundry inhabitants of the county of Burlington, asking that the right of suffrage be extended to women. [A]He said he did not wish to be considered as in favor of the petition, because it did not come from the females themselves—but he believed that they were generally as well fitted to exercise the elective franchise, as those who style themselves the "Lords of the Creation."

[J]Which was read, and,

On motion of Mr. Mickle,

Ordered, That the same do lie on the table.

Mr. Ewing, asked, and unanimously obtained leave to change his vote on the question of allowing paupers the right of suffrage. [A]He had inadvertently voted in the negative.

[J]The vice president announced the following committee, as appointed by the president, under the resolution to arrange and unite the several reports, *viz:*

Messrs. Vanarsdale, Vroom, Green, Spencer, and Stratton.

The convention then proceeded to the consideration of the unfinished business of the morning, being the report of the Committee on the Right of Suffrage, as amended in committee of the whole.

The third article being under consideration,

The amendments made in committee of the whole to the same, were severally agreed to.

[A]The amendment offered by Mr. Randolph this morning for holding all the elections at the same time &c was again taken up.

Mr. Ogden said that he had discussed the subject fully in Committee, where it had received a decided negative, and should not now re-argue it in detail. But he thought the Convention should endeavor to place the State Elections beyond the influences that are exercised at the Presidential Canvass.

That the people had always voted on the second Tuesday of October, and as the expenses of elections would be much diminished under the new Constitution, the people generally will prefer that the change should not be made.

That if the elective franchise is so dear as gentlemen represent it to be, electors will forego the little inconvenience of leaving their buckwheat crops for a few hours, to exercise this privilege.

That the new Constitution provides for the election by the people of Governor, Clerks, Surrogates, Senate and members of Assembly at one time, and that he did not desire to *compel* our citizens to go up to that election under the banner of Clay and Frelinghuysen, nor of Polk and Dallas.

Mr. Ogden presented several other objections against the adoption of the amendment and opposed it with warmth.

Mr. Hornblower said he had been prompt and early in taking the floor because he feared that odious and anti-republican measure, the previous question, would be started. It was a measure which should never have been started on this floor, a primary assembly of the people; and I for one will not submit to it—and if it is to be used, to deprive me from expressing my views and those of my constituents, I am no longer a member of this body! It may do for a petty Legislative body,

but not in a body like this. I was cut off yesterday and today, from expressing my opinions by this mean paltry and political manoeuvre.

Mr. Ryerson. I have felt it to be my duty to move the previous questions, and wish to know if the Chief Justice includes me in that category?

Mr. Hornblower. My objection is to the call of the previous question at all—and my eyes were turned to the President.

The question before us, that of consolidating our elections, is a most vital and important one; and I mean to take time to express my opinions as a freeman, and as the representative of a large and respectable portion of the freemen of N. Jersey. I have been delighted heretofore with the spirit which has pervaded this body, and I have supposed that our only object was the good of the commonwealth. And I hope I shall not be disappointed—but when I this morning heard my friend from Passaic opposing this amendment with all his powers of eloquence and with the warmth of party feelings, I began to tremble. Our arguments here should not be in the forensic style—in the style in which gentlemen of the bar defend their clients right or wrong—but they should be mild and conciliating—in the nature of suggestion—of counsel and inquiry.

I desire to argue this question in that spirit. I am not actuated by personal motives, nor by a mere desire to triumph—but to make suggestions, and to deduce arguments which may address themselves to the common sense and understanding of members, and to elicit from their patriotic bosoms, a response for the good of the commonwealth and nothing else.

In view of these principles, I ask if we ought not to adopt the amendment of the gentleman from Middlesex? I am in favor of an annual election, and upon principle, but because I am in favor of one election, it does not follow that I must be in favor of two, three or four. Moderation is the law of nature and if the Bible, by which I hope to be governed, be true, excess in everything is vicious—moral, physical or political! We have already had one election this year a very quiet one, we are to have another in August, another in October, and another in November. Now are the people ready for this? Do they wish to live in these continual scenes of party strife and feelings? I cannot speak for all the State, but my own constituents are a quiet people. They want an opportunity once a year to speak on political questions—but they do not want battle after battle, and conflict after conflict. They want all their elections at once. It is in vain to attempt to distinguish between State rights and interests, and National. It is impossible to separate

them.—What interests can New Jersey ever have, at war with any policy of the U. States? Tell me if you please.

I have not investigated the question on the score of economy. Other gentlemen have given that subject more attention: but I do know, that what saves the people's time, saves their money; and the indirect expense of these frequent elections upon the community, no one can calculate.

Mr. H. argued the point at considerable length.

Mr. Ogden. The Convention will indulge me in rising, when I declare at the outset, that I do not intend to speak again to the question.

My sole object is to reply to some of the remarks of the honorable member who has just taken his seat, and I trust that the Convention will hear me patiently, for a few moments.

Sir, it struck me most forcibly, and I doubt not that it also occurred to other members as very extraordinary, that a gentleman, who is so sensitive as the learned Chief Justice has shewed himself to be, upon misconstruction of his motives, one who has found it necessary, once and again, to rise in his place here, and to protest against the misunderstanding of gentlemen in the house, of his moving principles, and to assert and reassert his purity of purpose, should now draw his knife, and so unceremoniously and discourteously dissect the motives of others.

It is true sir, as he has remarked that moderation is the law of the Bible, and I would say to the learned member that I have always been taught the further truth, that *Charity* is likewise a divine command.

It has been charged against me by the honorable gentleman from Essex that in this discussion, I have manifested a *party zeal* and that I have conducted it in *forensic* manner, better adapted to advocacy of a bad cause in a Court of Justice, than to the debate of a subject of seriousness and importance.—Sir, if I understood myself my observations tended to guard against party spirit, and to save (if possible) our local elections from the extraneous influences, which are experienced at the elections of electors for President. I endeavored to bring about a return of those good old times, so often presented to our view by that gentleman, when candidates for office were selected in New Jersey on account of their capacity and worth, and not their political influence.

I invoked no political prejudice—I indulged in no party clamor, and I have good cause to complain of the manner, in which my motives have been impugned. Sir, I desired to leave the Constitution in this particular, as we found it, and not to remove *every* old landmark. I wished to prevent the introduction into this instrument by a close vote

of a change which involves no principle, & upon which there is much diversity of opinion; but I was actuated by no political impulse.

It is granted sir, to the honorable member, that I may be vehement in debate and that my views of a proposition are generally manifested by a zealous support. Such is my temperament, and sir, permit me to say in conclusion, that, if my remarks this morning were fervent, they discovered no improper motive, but they gave the Convention an earnest of the interest which I took in the debate, and an assurance that I would be found by the Convention upon the question, in the *afternoon* where I left it in the *morning*.

Mr. Randolph asked the indulgence of the House for a few minutes, as he had offered the amendment. Thus far no party votes have been given, nor party speeches made, and I hope we shall go on so. I do not offer it with any party motives nor do I think it has been so opposed. I offer it on principle, and likewise as a matter of expediency.

The gentleman from Passaic says, these separate elections are recognized by the old Constitution—as if we were not here for the very purposes of removing those parts of that which are wrong or inconvenient. This has been urged as an evil in the old Constitution. Eumenes so considered it, and it has been complained of from that day to this: and yet the gentleman from Passaic would perpetuate this very evil. I do not doubt that every member of this Convention has been asked why we should have two elections—and our only answer has been, that the Legislative election was fixed by the Constitution, the Electoral, by the Constitution of the U. S. Has not that been the only reason we could give? I hope and trust we will not perpetuate that evil. I am willing to trust the people, and the Legislature—and I entreat gentlemen that while they are thinking for themselves, they will also allow posterity to think for themselves.

Again. The season fixed on by the report is an inconvenient one. We should have some regard to the Electors. They are generally farmers: and the election comes in the midst of a harvest which must be attended to immediately or it is destroyed. And then as to the expense. The expense of 5 or $6000 paid out by the counties and townships for holding elections is small compared with the expense to the people themselves: and why should we subject the people to this loss of time and this expense, when it can all be done at one election as well, and I contend better than otherwise.

And what is its moral tendency? We hold one election just on the eve of another, and gentlemen talk of its being a quiet election, when we may select our best men. You might as well talk of sleeping on the

brink of a volcano! The first is but the prelude to the great Presidential contest in which all our energies and efforts are exerted. We all know what those efforts are: and who can tell the demoralizing effect of one election, which shows how close the parties are together, and yet how far asunder! You may talk about keeping them separate—just as if when a whole village is in flames, a little place in the middle can be kept cool and safe.

I contend that we can do it all at one election as well and better than at two—and that the people desire it. I hope the amendment will be adopted.

Mr. Ewing opposed it. He had been a farmer for 45 years and did not think that it would interfere with any harvest. It is the pleasantest season of the year, and the people are accustomed to the election then, and then it will be most agreeable to them. Mr. Griffith (Eumenes) has been referred to.—*He* did not object so much to the election at that time, as to the meeting of the Legislature so soon after and that we have already remedied—and he hoped the election would be retained as it has been.

Mr. Naar should feel bound not to vote at all, if it was a party question—but he should like to have some better reason for thinking so, than has been yet given.

Mr. Zabriskie thought that the remarks of the Chief Justice upon the calling of the previous question, and saying that he should cease to be a member, if it was persisted in, deserved the rebuke of the Convention. He held that it was the right, and the duty of every member to see that the rules which we have adopted (and this one) are enforced whenever it is necessary. This subject has been already discussed very fully in Committee, and yet we are compelled to listen to the arguments over and over again. He had called the previous question, and should do so again whenever he felt that duty required it.

Mr. Z. opposed the amendment. He said it was the old doctrine of consolidation, and he held that it was vitally important that the elections should be kept separate.

[G]The amendment was further advocated by . . . [Mr.] Allen, and opposed by Messrs. . . . Child and Parker.

[J]The question then being on agreeing to the amendment under consideration at the adjournment of the convention this morning,

The yeas and nays were demanded, and

It was determined in the negative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brick, Cattell, Clark, Condit, Field, Gilchrist, Hornblower, R. S. Kennedy, Marsh, Parsons, Randolph, Schenck,

Spencer, Stites, Stratton, Swain, Ten Eyck, Westervelt, Wood—21.

Nays. Mr. Cassedy, Child, Connolly, Dickerson, Edsall, Ewing, Fort, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Neighbour, Ogden, Parker, Pickel, Pitney, Ryerson, Sickler, Stokes, J. R. Thomson, Wills, Wurts (v.p.), Zabriskie—28.

The third article being still under consideration,

Mr. Ryerson moved to amend the same by adding, "but the time of holding such election may be altered by the legislature";

Which was agreed to.

Mr. Cattell moved to amend the same, by striking out "yearly and every year" and inserting "every second year."

And on this question the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Brick, Cattell, Clark, Condit, Connolly, Edsall, Ewing, Fort, Haight, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Randolph, Stites, Swain, Wood—20.

Nays. Mr. Allen, Bell, Cassedy, Child, Dickerson, Field, Gilchrist, Green, Hibbler, Jaques, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Ryerson, Schenck, Sickler, Spencer, Stokes, Stratton, Ten Eyck, J. R. Thomson, Vanarsdale, Westervelt, Wills, Wurts (v.p.), Zabriskie—31.

On motion of Mr. Stites, it was

Ordered, That the foregoing report, and that on a "Bill of Rights and Privileges," as amended, be referred to the select committee appointed to arrange and write the several reports.

On motion of Mr. Zabriskie,

The convention proceeded to the consideration of the report of the committee on subjects not referred to other committees, and the amendments made to the same in committee of the whole.

The preamble and section relative to the distribution of the powers of government, were read, considered, and adopted, and,

On motion of Mr. Zabriskie,

The same were referred to the select committee appointed to arrange and write the several reports, and the further consideration of the report was postponed.

On motion of Mr. Zabriskie,

The convention proceeded to the report of the Committee on the Executive Department, and the amendments made thereto in committee of the whole.

The first section being under consideration,

Mr. Randolph moved to amend, by adding "and lieutenant governor";

Which was not agreed to, and the section adopted, without amendment.

The second section being under consideration, the amendments made thereto in committee of the whole were agreed to, and the section, as amended, adopted.

The third section being under consideration, the amendment made in committee, by the substituting the following:

"The governor shall hold his office for three years from the third Tuesday of January next ensuing the annual election by the people; and he shall be ineligible to that office for three years next after his term of service shall have expired; *provided*, that no appointments or nominations to office shall be made by the governor during the last week of his said term,"

Was agreed to.

Mr. Ewing moved to amend the substitute, by striking out "three" before the word "years", and inserting "two"; [c]this was advocated by Mr. Vanarsdale, [who] [a]said *two* years was the time in New York. He should like that and that the clause preventing his re-eligibility should be stricken out. The difficulty is, that if the people are unfortunate in their choice or the Governor falls under bad influences, that the people will not have an early opportunity to redress themselves. He thought two years would be more satisfactory to the people, and that we should have a better governor, and that if we allow him to be re-elected, there would be greater motives and incentives for him to perform his duties well.

[j]And the yeas and nays being demanded,

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Cassedy, Cattell, Connolly, Dickerson, Ewing, Fort, Jaques, P. B. Kennedy, Lambert, Marsh, Mickle, Naar, Neighbour, Parker, Pickel, Pitney, Ryerson, Stokes, J. R. Thomson, Vanarsdale, Westervelt, Wood—22.

Nays. Mr. Allen, Bell, Brick, Child, Clark, Condit, Field, Gilchrist, Green, Haight, Hibbler, Holmes, Hornblower, R. S. Kennedy, Laird, Ogden, Parsons, Randolph, Schenck, Sickler, Spencer, Stites, Stratton, Swain, Ten Eyck, Wills, Wurts (v.p.), Zabriskie—28.

The third section being still under consideration,

Mr. Ryerson moved to amend, by striking out the words "and he shall be ineligible to that office for three years next after his term of service shall have expired." [a]He said, we have given the Governor the appointing power and one argument for it was his responsibility, but

he did not think that would avail much if he was made ineligible after one term.

Mr. R. S. Kennedy should vote against giving him the appointing power if he was to have the chance to make himself popular by his appointments. We all see the effect of that by Capt. [Pres.] Tyler's conduct; and he hoped no Governor of N. J. would ever pursue such a course.

Mr. Zabriskie. There is great force in all the gentleman says, except that about Capt. Tyler!—(Laughter)

[J]And on this question the yeas and nays were demanded, and

It was determined in the negative, as follows, *viz:*

Yeas. Mr. Connolly, Edsall, Fort, Hibbler, Hornblower, P. B. Kennedy, Laird, Mickle, Naar, Parker, Pickel, Ryerson, Stokes—13.

Nays. Mr. Allen, Bell, Brick, Cassedy, Cattell, Child, Clark, Condit, Dickerson, Ewing, Field, Gilchrist, Green, Haight, Holmes, Jaques, R. S. Kennedy, Lambert, Marsh, Neighbour, Ogden, Parsons, Pitney, Randolph, Schenck, Sickler, Spencer, Stites, Stratton, Swain, Ten Eyck, J. R. Thomson, Vanarsdale, Westervelt, Wills, Wood, Wurts (v.p.), Zabriskie—38.

The same section being still under consideration,

Mr. Parsons moved to amend, by striking out the word "third" before "Tuesday", and inserting "second";

Which was disagreed to.

Mr. Child moved to amend the same section, by striking out "from" and inserting "commencing on"; and also after "people" to insert "and terminating on the third Tuesday of January, three years thereafter;"

Which were, severally, not agreed to.

Mr. Wood moved to amend the same section, by striking out "for three years next after"; [G]so that the Governor should be forever ineligible.

[J]Which was disagreed to.

The section, as amended, was then adopted.

The fourth section being under consideration, [A]that "the Governor shall have been for twenty years at least a citizen of the U. S. &c,"

[J]Mr. Vanarsdale moved to amend, by striking out "twenty" and inserting "ten"; [A]if a foreigner is naturalized at 21, he cannot be eligible, till he is over 40, while a native is, by the same section, at 30. He thought we should not raise these distinctions unless for good and substantial reasons, and this will bear a better proportion to the term of citizenship in the U. S. for a Senator (4 years) and for a member of the Assembly (2 years). He thought the Convention should not be

influenced by the passing events of the day. They too will pass away, and these distinctions will then be objectionable.

[G]Mr. Hornblower asked for the yeas and nays.

Mr. R. S. Kennedy said this clause was adopted as a compromise. He would move to amend the amendment so as to require that the Governor shall be a native born citizen. (Out of order.)

Mr. Vanarsdale's motion was not agreed to, [J]as follows, *viz:*

Yeas. Mr. Child, Connolly, Dickerson, Edsall, Ewing, Haight, Hibbler, Jaques, P. B. Kennedy, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Ryerson, Stokes, J. R. Thomson, Vanarsdale, Wurts (v.p.), Zabriskie—21.

Nays. Mr. Allen, Bell, Brick, Cassedy, Cattell, Clark, Condit, Field, Fort, Gilchrist, Green, Hornblower, R. S. Kennedy, Laird, Lambert, Marsh, Mickle, Pitney, Randolph, Schenck, Sickler, Spencer, Stites, Stratton, Swain, Ten Eyck, Westervelt, Wills, Wood—29.

The same section being still under consideration,

[G]Mr. Naar moved to amend so as to require that the Governor shall not be less than thirty five (instead of thirty) years of age, and shall have been fourteen years a citizen.

[A]Here followed a discussion by Messrs. Naar and Hornblower about the legal definition of the term "citizen."

[J]A division of the amendments was called, and the question ordered to be taken on each separately.

The amendment offered, to strike out "thirty" and insert "thirty-five", was disagreed to, [A]30 to 15.

[J]The question then being on agreeing to the amendment, to strike out "twenty" and insert "fourteen", the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Cassedy, Child, Connolly, Dickerson, Edsall, Ewing, Fort, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Neighbour, Ogden, Parker, Parsons, Pickel, Ryerson, Stokes, J. R. Thomson, Vanarsdale, Wurts, Zabriskie—24.

Nays. Mr. Allen, Bell, Brick, Cattell, Clark, Condit, Field, Gilchrist, Green, Hornblower, R. S. Kennedy, Laird, Lambert, Marsh, Mickle, Naar, Pitney, Randolph, Schenck, Sickler, Spencer, Stites, Stratton, Swain, Ten Eyck, Westervelt, Wills, Wood—28.

The same section being still under consideration,

Mr. Gilchrist moved to amend, by inserting after "resident" the words "and a freeholder";

[A]Mr. Ogden said that would require the Governor to have been a

freeholder for 7 years before he could be elected.

[J]And on this question the yeas and nays were ordered, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Condit, Gilchrist, Mickle, Parker, Schenck—5.

Nays. Mr. Allen, Bell, Brick, Cassedy, Cattell, Child, Clark, Connolly, Dickerson, Edsall, Ewing, Field, Fort, Green, Haight, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Randolph, Ryerson, Sickler, Spencer, Stites, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, Vanarsdale, Westervelt, Wills, Wood, Wurts (v.p.)—45.

The question then being on agreeing to the section, the same was adopted, without amendment.

The fifth section being under consideration, the same was agreed to, without amendment.

The sixth section being under consideration,

Mr. Ogden moved to amend, by inserting before "seal" the word "great";

Which was agreed to.

[G]Mr. Sickler offered the following resolution:

Resolved, That all fancy amendments be dispensed with, until after the 2nd day of July next, when those members whose exuberant imaginations shall have full scope, without interrupting the progress of this convention. (Out of order.)

[J]Mr. Allen [Field, according to the Advertiser] moved to amend the same section, by striking out [G]the clause authorizing the Governor to convene the *Senate only.*

Which was agreed to, and the section, as amended, was then adopted.

The seventh section being under consideration,

[A]Mr. Connolly moved to strike out the clause requiring only a majority to pass a bill after a veto, and insert three-fifths.

Mr. R. S. Kennedy had hoped that question was settled, but if it must come up again, he was glad it had come from Monmouth.

When I said before, that this was a party question, it was denied, but the vote that we then took showed that it was so. The whole thing is a party question. We were sent here by a party Legislature, and after the wise and good men of both parties had agreed upon the compromise, it was broken in upon by the county from which this motion comes, and a majority of *two* secured for some purpose—and it was this. [G]Gentlemen have the power in this convention, let them if they

choose exercise it and take the responsibility.

Mr. Green interrupted the gentleman from Warren. [A]He regretted very much that such a course of remark should be indulged in by any member [G]and hoped he would not proceed, to which Mr. K. acceded.

[A]Mr. Ogden said this was not a party question. After the former vote, he had said publicly, after conversation with members, that it should not be brought up again, and the gentleman from Monmouth makes the motion without any consultation with others that he knew of.

Mr. Connolly made the motion solely of his own accord. That was the first he knew of an understanding that it was not to be brought up again. He wished to record his vote on it, as he supposed he had a right to do, and as other gentlemen had done on similar occasions.

Mr. Ryerson hoped this would be a lesson to the gentleman from Warren, and that we should hear no more about party from him.

Mr. Bell said he must do the other party justice. Since the other vote, he had heard several of them say that they should go against the veto, if it was brought up again.

Mr. R. S. Kennedy said the gentleman from Sussex had given him his lesson and told him he must not say anything more about party. It will depend altogether on this vote, whether he should or not.

Mr. Allen said no party was responsible for the motion of any one, and he did not believe there was any desire or intention to make this a party question. If the gentleman thinks his object is right, it is his right and duty to make the motion, and we have no right to impugn his motives; and he hoped the vote would not be a party, but a wise and discreet, one. He said that one party was not responsible for the motion of the gentleman from Monmouth, nor the other for the remarks of the gentleman from Warren.

Mr. Field would be glad if the motion was not insisted on. It was well known that he had voted for it before, but he should vote against it now as he thought it had been fairly settled, and that it was not desirable that so great a change should be made by a mere majority, although he should be glad to be able to vote for it again, merely to show the gentleman from Warren that it was not a party question.

[Mr. Sickler also] [G]disclaimed any party motives [and Mr. Hornblower] made some remarks of a pacifying nature.

At the request of Mr. Field, who had voted for the three-fifths in committee, Mr. Connolly withdrew his motion. He said he had only made it because he wished to record his vote in favor of it, [A]and had no wish to create any feeling.

[J]The amendments made [to the seventh section] in committee of

the whole were agreed to, and the section, as amended, was then adopted.

The eighth section being under consideration, the same was agreed to, without amendment.

The ninth section being under consideration, the amendment made in committee of the whole, by striking out the same, and inserting the following:

"The governor shall have power to suspend fines and forfeitures, and grant reprieves, to extend until the expiration of a time not exceeding ninety days after conviction; but this power shall not extend to cases of impeachment",

Was agreed to.

Mr. Ryerson moved to amend the same, by inserting, after "suspend" the words "the collection of";

Which was agreed to.

Mr. Ogden moved further to amend, by inserting, after the word "governor", the words "or person administering the government",

Which was agreed to.

The question then being on the section, as amended, the same was adopted.

The tenth section being under consideration, the amendments made thereto in committee of the whole were agreed to.

Mr. Ogden moved to amend the same, by inserting the following, as a substitute:

"The governor, or person administering the government, the chancellor and the six judges of the court of errors and appeals, or a major part of them, of whom the governor, or person administering the government, shall be one, may remit fines and forfeitures, and grant pardons after conviction, in all cases except impeachment." [A]He said it was understood before, that the motion should be made but that we had not then settled what should constitute the Court of Errors.

[J]Mr. Schenck moved to amend the amendment, by striking therefrom "and the six judges of the court of errors and appeals" and insert "president of the Senate and speaker of the House of Assembly". [A]He said the pardoning power did not belong legitimately to any one of the departments of the Government, but was the mere merciful exercise of the sovereign power.—His amendment would make the Court more conformable to the theory and spirit of our institutions. It will combine all the departments, the Governor (Executive,) the Chancellor (Judicial,) and the President and Speaker (Legislative)—and would therefore properly represent the sovereign power. The Court

would always be a competent one and the people would be satisfied and have confidence in it.

[J]Which was not agreed to.

[A]Mr. Stratton was opposed to including the six Judges. He did not want the responsibility to be divided.

Mr. Cattell did not want the Court to be open all the year, as it would be, if it was composed of the Governor and Chancellor.

Mr. Hornblower concurred with Mr. Stratton.

[J]The question then being on agreeing to the section, as amended, the yeas and nays were demanded, and

It was determined in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Brick, Cattell, Child, Clark, Condit, Connolly, Dickerson, Edsall, Ewing, Field, Fort, Green, Haight, Hibbler, P. B. Kennedy, Lambert, Marsh, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pitney, Randolph, Stites, Stokes, Swain, Vanarsdale, Westervelt, Wills, Zabriskie—33.

Nays. Mr. Bell, Gilchrist, Holmes, Hornblower, Jaques, Laird, Pickel, Ryerson, Schenck, Sickler, Spencer, Stratton, Ten Eyck, J. R. Thomson, Wurts (v.p.)—15.

The eleventh section being under consideration,

Mr. Ogden moved to amend the same, by striking out all after the word "office";

Which was agreed to.

Mr. Parker moved to amend, by striking out the word "any";

Which was agreed to.

The section, as amended, was then adopted.

The twelfth section being under consideration, and the question being on agreeing to the amendment made in committee of the whole to strike out the words "for the time being",

On motion of Mr. Green, the same was disagreed to.

The other amendments made in committee of the whole were then severally agreed to, and the section, as amended was adopted.

The thirteenth section being under consideration the amendment made thereto in committee of the whole was agreed to, and the section, as amended, was then adopted.

The fourteenth section being under consideration, the same was agreed to, without amendment.

The amendment proposed by Mr. Parker to Sec. II, in committee of the whole, which reads as follows, *viz:*

"The returns of the votes for governor, at the first election under this constitution, shall be transmitted to the governor of the state,

or the person administering the government, and shall be counted, and the election declared in the manner now provided by law in the case of election of electors of president and vice president of the United States",

Was then taken up, and

Pending the consideration thereof,

On motion of Mr. Parker,

The convention adjourned till to-morrow morning, at nine o'clock.

[J]WEDNESDAY MORNING, 19th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Hall.

On motion of Mr. Wills, it was

Resolved, That the constitution agreed upon by this convention be engrossed upon parchment.

[A]Mr. Vanarsdale asked that the Committee on Revision, have power to have the reports printed as they finished them.

[J]On motion of Mr. Ryerson, it was

Ordered, That the select committee appointed to arrange and unite the several reports, be authorized to have the same, as agreed upon in the convention, printed forthwith.

The convention then proceeded to the consideration of the unfinished business of yesterday afternoon, being the report of the Committee on the Executive Department and the amendments made to the same, in committee of the whole; the question pending being on the substitute offered by Mr. Parker for that part of the second section prescribing the manner of conducting elections for Governor. The substitute simply provided that the first Governor's election should be conducted in the mode now prescribed by law for the Presidential election; and left succeeding elections to be conducted as the legislature should direct.

Mr. Jaques suggested that it would be better simply to strike out the part of the second section objected to and to place in the schedule, the provision as to the election of the first governor; to which Mr. P. acceded.

[J]Mr. Parker moved to reconsider the vote by which the second section, as amended, was adopted;

Which was agreed to.

Mr. Parker moved to amend the second section, by striking out the following words: "the returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the secretary of state, who shall open and publish them in the presence of the members of both houses of the legislature on the day next after the time appointed for the meeting of the legislature, or as soon thereafter as a quorum of both houses shall be present";

Which was agreed to.

Mr. Hornblower moved to recommit the second section to a select committee;

Which was disagreed to.

Mr. Stites moved to recommit the same to the Committee on the Executive Department;

Which was not agreed to.

Mr. Ryerson moved to amend the same section, by striking out "forthwith" and inserting "as soon as both houses of the legislature are organized";

Which was agreed to.

Mr. Pickel moved to amend the same, by striking out the following words: "by a committee to be selected from both houses of the legislature, and to be formed and regulated";

Which was agreed to.

Mr. Child moved to reconsider the vote by which the amendment to insert the words "as soon as both houses of the legislature are organized";

Which was agreed to, and the question then recurring on agreeing to the amendment, it was determined in the negative.

The section, as reconsidered and amended, was then adopted.

Mr. Cassedy moved to reconsider the fourth section, for the purpose of striking out "twenty" and inserting "seven";

Which was disagreed to.

Mr. Parker moved to reconsider the vote by which the third section was adopted;

Which was not agreed to.

On motion of Mr. Parsons, it was

Ordered, That the report of the committee on the Executive Department, as amended, be referred to the select committee appointed to arrange and unite the several reports.

On motion of Mr. Ryerson,

The convention proceeded to the consideration of the report of the Committee on the Judiciary Department, and the amendments made thereto, in committee of the whole.

The first section being under consideration, the amendments made in committee of the whole to the first paragraph were agreed to.

Mr. Jaques moved to strike out the first section. Mr. President: If I be in order I now propose to offer a few remarks on the subject of our System of jurisprudence, the result of reflections which have in part grown out of the discussions which have taken place on this floor. I presume my views will be considered novel, if not strange, and I may be regarded with distrust, and perhaps with derision. Be it so, I am prepared to meet it all. I have a consolation in the motive.

I believe the present common law doctrine to be founded in error, and consequently the whole superstructure of statutory law, and the practice and decisions in our Courts to be erroneous and productive of wrong.

The very first lesson in law which is put into the hands of a student, teaches a falsehood. Blackstone is the text-book, and notwithstanding he lays down the law of nature tolerably correct, and the theory of man's natural rights, and expresses his admiration of their beauty, their excellence, and their benign influences if they could be reduced to practice. But as a man in despair, he turns about and tells us that owing to man's ignorance and perversity it is impossible, therefore on entering into society men give up their rights. We therefore never hear an Englishman boast of his rights, but the glorious privileges of Englishmen. If they talk of rights it is vested rights; derived rights, not natural rights. And the same notion of rights prevailing in this country derived from the Feudal common law doctrine which runs through all our legislation, and the practice in our Courts of law, and Chancery. All of which is directly at war with the doctrine taught by our revolutionary Fathers in their declaration of independence, "that all men are created equal," and endowed by their Creator with certain rights which are unalienable; and if unalienable they cannot be given up. Until such errors be eradicated from the mind, we cannot expect any thing but evil to result from such doctrines, yet the gentleman from Camden on my left candidly tells us that none but lawyers are competent to sit in Courts—and why? because they are learned in the law.

To this I would reply in the language of Banana [Barnave] "miserable is the condition of that country, where the study of law is a science."

Until the disclosures on this floor, I was not aware of the scenes of iniquity practiced to poison and prevent the streams of justice and of legislation. We hear the people blamed for their venality, their corruptions and dishonesty. And why are they so? Because men in high places set the example of doing wrong; our legislation, the proceedings in our Courts of law, are wrong because they are based on an erroneous Philosophy.

In the language of an eminent author I ask;—"How comes it that so many are infected with the pestilence of wickedness? Is it that they who bear rule over them, having caught the distemper communicate it to others? By the first ambitious man was the world corrupted."

I repeat that our legislation and our judicial proceedings are founded in error, in wrong. And what can we expect to flow from erroneous premises but erroneous conclusions?

Suppose we had made an error in the first rule of Arithmetic, and been taught to believe that one and two make four; would not the error run through all our calculations, and produce erroneous results? —most assuredly it would. Yet not more so than does the erroneous doctrine that men on entering into society give up their rights to such society, to be disposed of in such manner as it may deem proper; hence the doctrine of vested rights. And what have we witnessed on this floor? When the contrary doctrine was presented to this Convention, and shown that, "man has rights from his very nature, not the gifts of society, but of God; that they are not surrendered on entering the social state," it was almost unanimously rejected as an abstraction.

And why so? because our minds are so unprepared to embrace the truth when presented before us, we still cling to the error taught us that one and two make four.

I am told that this view of man's rights is an abstraction, that it may be true in the abstract, but cannot be reduced to practice. To this I reply in the language of the lamented Leggett, "convince me that a thing is true in the abstract, and I will reduce it to practice if I can."

But what are we to understand by the term abstract, or abstraction? It does appear to me to be a word well calculated to cover our ignorance, our prejudice, or some covert design. The English language is replete with words well calculated to divert the mind, from the pursuit of truth. Such language I believe is termed sophistry. But human rights are not thus to be reasoned away. They belong to man as a moral being, and nothing can divest him of them but the destruction of his nature. They are not to be given up to society as a prey. On the contrary, the great end of civil society is to secure them. The great end

of government is to repress all wrong. Its highest function is to protect the weak against the powerful, so that the obscurest human being may enjoy his rights in peace. Strange that an institution, built on the idea of rights, should be used to unsettle this idea, to confuse our moral perceptions, to sanctify wrongs as means of general good.

The gentleman from Hunterdon the other day, when on the subject of the right of suffrage, seemed to think that he had found an answer to my questions on the common law. I doubt not all the gentlemen of the profession can find answers to satisfy themselves, but this will not satisfy the people, we want something that we can understand also. We want a code of laws for the use of the people and which they can read and understand, that they may know their rights, their responsibilities, and their duties; not contained in a thousand books that they cannot read, or in language that they cannot understand.

They want Courts so organized and their proceedings so simplified as to be acceptable by all without the aid of an Attorney; they want a common law so plain, so easy to be comprehended that the commonest people could read and understand it for themselves, a law formed in common sense, on common usage, and common justice. Such a law would be in reality common law, and what the name purports to be, and from which it derives its name. When the gentleman furnishes us such a law we will give him full credit for his researches, but until then he will please excuse us if we complain of his common law.

What does the present state of the jurisprudence of this country present to the contemplative mind?—We have almost innumerable books of law which if put in one heap would like the tower of Babel, raise a column pointing to the skies, and like it too, consisting of a confusion of tongues and of opinions—a monument of the learning, and industry, and the powers of mind. But alas, they are a heap of errors, because they are based on a wrong philosophy of man's constitution, and of his rights. You may as well attempt to change the law of gravity, as to change the rules of right, by any train of reasoning.

I was truly gratified to hear his honor, the Chief Justice, declare that he would rather entrust his rights to the judgment of honest, intelligent, and well-informed men, wholly unacquainted with law, than to half-bred lawyers. And why so? Because such men are less led astray by the erroneous doctrines of the common law, and because they are more under the influences of that universal code, of universal principles of right, written by the finger of God upon the heart of man—but which the whole theory and practice of our law courts, are but too well calculated to deface and obliterate.

Another great and crying evil in our Courts is judicial legislation. It is a matter of regret that the whole voluminous heterogeneous mass of complex laws, legal doctrines and royal (now State) prerogatives, together with the decisions in common law and equity, are of force, or looked up to as proper examples by the bar and the bench of every State in the Union.—Add to all this vast accumulation of ages past and gone; our own constantly increasing number of statute laws and decisions, and then some measureable idea may be formed of the difficultics of American jurisprudence.

Before a cause can be submitted to a jury, the Judges have to legislate the statute and common laws into a harmonious whole, in order to enlighten or bewilder the jury into a corresponding view of the case. It is recorded as having been the boast of Justice Pemberton, "that in the practice of explaining and amending, he had made more law than the Parliament."

The essence of right and wrong does not depend upon words and clauses inserted in a code or statute book; much less upon the conclusions and explanations of lawyers; but upon reason, and the nature of things antecedent of all law.

The people of this country want a judiciary system better suited to the enlightened, civil and moral condition of the age in which we live.

The present I conceive not to be such system—and we are left to look for another, based on other and truer principles. The conflicting opinion of those who ought best to understand it demonstrates its want of perfection.

We want the right of trial by Jury restored on its original powers and rights, as instituted by our Anglo-Saxon ancestors, and to which we their descendants cling as our sheet anchor—as our last best hope—as the safety of our rights, liberties and happiness. But the trial by jury as now in use in our Courts, is but a shadow of what it was when first instituted. It was then composed of the best men of the country, selected, or elected by their fellow-citizens for their wisdom, their virtues, and their integrity. They were judges of the law, of the testimony, the facts, and the justice or equity of the case.

The magistrate presided in the Court to keep order and regularity in the proceedings, and to explain the law,—lawyers were not then known as a separate profession in England, nor until the Norman conquest when the Feudal system of laws and legal practice with all its subtleties, mysteries, technicalities, its fictions all calculated to deceive and impose on the people, were brought into use, and the trial by jury despoiled of all its salutary powers. We now ask its restora-

tion to its original authority and purity.

I find precedent is highly respected, and freely referred to on this floor as a light and a guide to our actions. I too have a precedent for the measure I propose, and that in our own country and our own State.

From Bancroft's Colonial History of New Jersey, I quote the following extract as part of the Constitution, or "Fundamentals" of West New Jersey, established in 1677.

"Justices and Constables were chosen directly by the people; the Judges appointed by the general Assembly retained office but two years at most, and sat in the Courts but *as assistants to the Jury*. In the twelve men, and in them only, judgment resides; in them and the general Assembly, rests discretion as to punishments. No man can be imprisoned for debt. Courts were to be managed without the necessity of an attorney or counsellor."

Here then we have the Anglo-Saxon trial by Jury. In the commonest difficulties that occur between man and man, a lawyer must be consulted before either party can know his legal rights, his legal duties, and legal responsibilities. Add to this, that it often ultimately requires volumes of reports to be consulted, long speeches to be spoken, before any conclusive knowledge can be arrived at. All other social evils are small in comparison to this; for can a people be subject to a worse one than that of being governed by laws of which they are ignorant, and of which they can acquire no adequate knowledge, unless they abandon all other pursuits, and study law alone.

Our ancestors erred by not excluding from our Courts of law at the close of the war of the revolution all the Normanic statutes of the parliament of England, with all the law authorities and books appertaining thereto. I urge it now as a national right and duty; if we must have a common law; have we not sufficient material in our own country? The report of cases in the Courts of our own State, the United States, the States of New York, Pennsylvania, Massachusetts and others, furnish ample matter for contemplation and study.

I repeat let us carry out the principle of National Independence to its fullest extent in every thing, more especially as respects our Judicial polity.

Another great error is the permitting lawyers to plead before a jury in civil causes, and I have strong doubts of the propriety of permitting them to address a jury in criminal cases. Such addresses are calculated to mislead the judgment, and in many instances to produce injustice. We have had a most instructing example here on this floor since the organization of this Convention, of the powerful influences of oratory

over the minds of the hearers. We all well remember the scene enacted during the debate on the subject of employing a stenographer to report the debates of this house; the changes that evidently took place in the minds of the members, and the final result of the question.

The relation of the Honorable the Chief Justice, of the conflicts in his mind during the debate on the subject, is a clear and signal proof of the power of Elocution, over the feelings—its uses—and its dangers. And we all acted with the same caution and prudence as did his honor; and had we indulged him in his reasonable request to give time for reflection, for the influences of the second sober thought, the result in all probability, would have been different.

Again, the gentleman from Salem gives us an instance of the powers of Oratory before the Court of Errors in an attempt to operate on the prejudices, the political prejudices of its members against the late Governor and justifies the course and tells us it is fair game. I regret to hear such an expression, a sentiment worthy [unworthy?] of its author.

Now, Sir, if the powers of Oratory can produce such effects on the minds of gentlemen accustomed to listen to arguments of learned and eloquent men, almost every day, what would, or is likely to be the effects or influences on the minds of twelve good, honest and unsuspecting men, sitting as jurors? Is there not danger that their judgments would be misled? Suppose two gentlemen acting as advocates of very unequal oratorical powers, and that the gentleman possessing the greatest powers of pursuasion or eloquence, should be the advocate of the party actually in the wrong, (as I presume there is a right and a wrong side to all questions.) Is it not possible, nay more than probable, that a jury thus circumstanced would be misled? It strikes me that they would, and that the course of justice could or would be perverted. For these, and other reasons which might be adduced, I do believe we ought not to allow pleadings before juries, excepting in some criminal cases, and I even doubt the propriety in criminal cases.

There is another practice in our courts of law to which I must be permitted to invite the attention of this Convention. It is the rules for the admission of testimony. The jury is sworn to give a verdict according to evidence. Here then the contest begins between the Attorneys of the parties; not to elicit truth, but to shut out the truth by the rejection of testimony by the aid of the arbitrary rules of Courts, and the equally arbitrary and unintelligible law of evidence, which in nine cases out of ten leads to injustice and wrong. Now I ask in all humility, why not let all the testimony without restriction come before the jury, and leave them to judge of the testimony, the facts, and the

justice or equity of the case, and under the advisement of the judge, also of the law?

I repeat again, restore juries to their ancient rights; let them be elected or chosen for their intelligence, their virtues and their fitness, and my word for it, there will be but few appeals from their verdicts, and our courts will then be courts of justice or equity indeed.

You, gentlemen of the bench and the Bar, you have much to answer for. You have it in your power to do much good. You have it in your power to strip the proceedings of our courts of law of their mysteries, their fictions, their chicanery and their technicalities, and to render them plain, easy to be understood, and to be acted upon, and if you do not do those things, you will not perform your duty to your fellow citizens, who sent you here.

[G]Having concluded he withdrew his motion.

[J]Mr. Ogden moved to amend the section, by striking out the first paragraph, to the word "requires" inclusive, and inserting the following [A](containing precisely the same provisions, but clothed in more technical language):

[J]"The judicial power of this state shall be vested in a court of errors and appeals in the last resort in all causes, as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter, or abolish, as the public good shall require";

Which was agreed to.

Mr. Ryerson moved to amend the same section, by striking out, in the second paragraph, the words, "the justices of the supreme court" [A]so that the Court of Errors shall consist of the Chancellor and six Judges.

Mr. P. B. Kennedy opposed the amendment. This court he looked on as the court of last resort, and the Justices of the Supreme Court should form a part of it. The decisions of the Justices of the Peace—of the Pleas—of the Circuit Court, and of the Supreme Court, must all be in accordance with the laws of the land, or they will be reversed by the Court of Errors. Mr. K. said the Court, if composed of non-professional men, might reverse decisions which were strictly in accordance with the principles of law, because they might not be in accordance with right and equity [this sentence added in a later issue]. If all these Courts were Courts of Equity I should go for striking out these Justices, as there would then be no occasion to have legal gentlemen in the Court of last resort, as members who did not understand the law would be conversant with the principles of equity, and decide matters according to those principles.

Mr. Randolph. This subject was fraught with difficulty to the committee who reported this bill. The old Court of Errors met with many objections, and that was discarded for several reasons. It was thought proper that a portion of the Court should be constituted of legal gentlemen and the Justices of the Supreme Court were put in, and after several propositions had been advanced and rejected, it was finally agreed to insert six Judges for this Court, under the idea that they would be selected not from the legal profession. The motion now made is to strike out the Justices of the Supreme Court. What then would be the effect of an appeal from the Court of Chancery? There would be six Judges, who are not lawyers to determine and pass upon a decision of the Chancellor. As the section now stands, if a writ of error is carried from the Supreme Court, the Justices of that Court can only give their opinions and reasons. If any amendment is necessary at all, I do not think this is the proper one. Strip the Court of Errors of so essential a branch, and you render it necessary to remodel the whole system. I hope the amendment will not prevail.

Mr. Pickel was in favor of the amendment, and would go also for striking out the 6 Judges, and gave notice that he should make a motion to that effect.

Mr. Field. The amendment of the gentleman from Sussex, is doubtless a tribute to the eloquence of the gentleman from Middlesex (Mr. Jaques) and he means to abolish the laws entirely and introduce the beautiful system floating through the brain of that gentleman. If the motion is made to strike out the six Judges and to insert the Senate, I am not sure but I would go for it, but the motion to strike out the Judges of the Supreme Court I hope will not prevail, as the Court of Errors will then be entirely constituted of non-professional men; whereas among the Senators, the chances are, that some of them will be legal gentlemen. I trust every member will deprecate the formation of a Court of last resort composed entirely of unprofessional men.

Mr. Condit. The old Court of Errors has always been a subject of much complaint, and I would constitute a better one. I have since this provision was adopted as a part of the Constitution in Committee of the Whole, heard this spoken of most favorably from all quarters, and I think it a great improvement. It has always appeared absurd that a court of this character should be composed of gentlemen out of the legal profession, to review the decision of the Supreme Court and

Court of Chancery. I have been so situated myself, and I have never been favorably impressed with it, and I never have heard a man speak of that Court in terms of commendation, except indeed by a party who had gained his cause. I do not think we can agree on any thing better than the one reported, and I hope there will be no alteration in it.

Mr. Stokes. I hope the amendment will prevail.—All the arguments against it are based on the presumption that the 6 Judges will be incompetent men and that does not follow because they are not of the profession.

Mr. Field. I did not say they would be incompetent. I said they would not be competent to give decisions in questions involving legal points.

Mr. Randolph said he had used the same expression.

Mr. Stokes. Well, sir, this was the greatest recommendation to my mind. I suppose the Court would be constituted of the six best, and most talented men not of the profession who could be found in New Jersey. If the technicalities of the law are such that they require men to give judgment in opposition to equity, that is the strongest reason to my mind, why we should have a court to set matters right.

Mr. P. B. Kennedy explained, that he meant to say Courts must decide in their accordance with the principles of the law, not adversely to the right. A Justice may give a decision in accordance with his notions of right, and overturn all the rules of law which other Courts are bound by their solemn oath to adhere to. The Court of Errors as formerly established might overturn a decision because it was not in accordance with their notions of right, though it was in strict accordance with the principles of law.

Mr. Stokes. The whole argument, I repeat, is based on the assumption that these six Judges would be incompetent, and that competence is to be found only in members of the legal profession. They would not reverse a decision because it was in accordance with the law, when there was equity also. In matters of importance, how often do the Judges entertain different views? We have everything now mystified, and we ought to have a tribunal whose decisions would be constructed not on technicalities only, but whose right and justice may be reached. The gentleman seems to think that law is reduced to a science and that if this court is composed of members of the profession, all one has to do, is to put a cause in it, and it will come out all right. I hope the amendment may prevail and we shall then have a Court in which the people have confidence.

Mr. Ogden. It is hardly fair to embrace all the members of the

profession.

Mr. Stokes. I referred to them only so far as the views have been advanced by gentlemen. It is an obsolete idea that no correct judgment can be formed out of the legal profession.

Mr. Hornblower should not vote upon this question, but he wished to make a few remarks. The idea seems to be that equity is whatever any man may think just; that is not so. Equity is governed by rules as well as Law, and Courts of Equity are as much bound to them as Courts of Law. Mr. H. proceeded to instance the operation of a Court constructed without members of the legal profession in cases where wills, or deeds, or constructions of delicate questions come up, and he showed how useless such a Court would be for all practical purposes.

Mr. Ryerson. I moved to strike out Justices of the Supreme Court because I do not wish to see the rights of individuals placed in a tribunal half made up of gentlemen of the legal profession, and I cannot but think, though I know I differ from members of the bar generally, that where a Court is too much made up of legal gentlemen, they are too apt to be prejudiced by technicalities instead of reason and law. If my motion succeeds, I intend to move further to give the Chancellor power to sit at all times in the Court of Errors. Then the Court would consist of the Chancellor and 6 Judges instead of the Chancellor and 19 Judges as now. The objection to members of the Council is that they are often called on to pass upon the constitutionality of laws for which they have voted. If the Court is composed of the Chancellor and these 6 Judges, who will be the best men that can be selected, it will afford perfect satisfaction. I repeat I cannot vote for the construction of a Court of Errors to be half made up of lawyers.

Mr. R. S. Kennedy opposed the amendment.

Mr. R. P. Thompson. It is a little singular that the gentleman from Burlington should regard this amendment as important because it will tend to institute a people's Court. Does he suppose, Sir, that the members of the Court of Errors are to be approached by the doctrines of right, or equity or justice, and that they will break down the well established principles of the law? If so, why do you have a supreme Court at all? Why not have a Court of farmers? Why require that the Chancellor should possess legal attainments? You can get farmers; men of good sound practical sense, with as just an appreciation of right and wrong as members of the Bar. But Sir, from the earliest organization of Courts, they have always put the strongest legal talent there, and yet it is objected to on the ground that it will not be a people's court. We might as well unsettle all the foundations of the

laws in New Jersey. Law is a well settled and immutable thing. Justice is what you and I may think.

The very thing that makes this article acceptable to me is, that it is a people's court; all classes are represented. The Chancellor is appointed by the Governor and Senate. The Justices of the Supreme Court are lawyers and the 6 Judges are the people's court. Here is a combination of talent and learning, gentlemen of the legal profession and the laity, and I ask, is it not a combination most likely to effect a good Court of Errors. All admit that the old Court was badly constructed, but I would prefer that to the court now proposed without the Justices of the Supreme Court, as soon as I would the Supreme Court to the Common Pleas. I know not, of course who the 6 Judges may be, or from whom appointed, but they cannot be competent to understand legal questions; I mean competent to understand them in accordance with the great principles of human right and justice.

But what would be the effect of a court thus constructed? this court in which the people can confide. Let me suppose a case. The Supreme Court have decided an important principle of law, and it goes before the Court of Errors. It may be that these 6 Judges are laymen. Suppose they are all laymen.—Would it not be an anomaly to suppose that the people would be satisfied if they decided that the decision of the Supreme Court in favor of it does not prove it to be the law of the land? What confidence would the people have in the decision of such a court? In a mere matter of dollars and cents they could decide no doubt as well as the Judges of the Supreme Court, but on questions of Constitutional law, all talents, all learning would be set afloat if this doctrine is to be established by this Convention.

Mr. Naar. I am in favor of the amendment: persons not practically acquainted with the law can give correct legal decisions. In every case gentlemen of the bar are engaged on either side. They explain and show every thing connected with the law, and the Court of Errors has only to decide according to the principles of law, as shewn by the gentlemen of the profession. The competency of laymen to judge of the law is as perfect as that of Judges of the Supreme Court. Not long since I was on the bench of the Oyer and Terminer with the Judges of the Supreme Court, a question of law was raised, and after we retired and the votes were counted, it was found that one Judge of the Supreme Court went one way and one another, and where I ask is the safety we are to obtain in having these Justices in the Court of Errors?

Mr. Hornblower explained that in the case referred to, he was not present at the trial, but was called on to hear the argument for a new

trial, and had voted for it, in preference to passing sentence for execution.

Mr. Naar. Well, at all events there was an absolute conflict of opinion, and I refer gentlemen to the opinion on this very case, and if there is not a direct censure on the decision, I give it up. The bench and the bar too will differ on points of law. This being the case, will the addition of the Justices of the Supreme Court, give any greater security as to principles of law?

Mr. Stokes. I wish to correct a statement that I said this would be the people's Court; I said it would be a Court in which the people would have confidence.

And on this question the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Ms. Cassedy, Connolly, Edsall, Fort, Holmes, Stokes, Jaques, Laird, Lambert, Mickle, Naar, J. R. Thomson, Neighbour, Parker, Pickel, Pitney, Ryerson, Westervelt—18.

Nays. Mr. Allen, Bell, Brick, Browning, Cattell, Child, Clark, Condit, Ewing, Field, Gilchrist, Green, Haight, Halsted, Hibbler, P. B. Kennedy, R. S. Kennedy, Marsh, Ogden, Parsons, Randolph, Schenck, Sickler, Spencer, Stites, Stratton, Swain, Ten Eyck, R. P. Thompson, Vanarsdale, Williamson (pr.), Wills, Wood, Wurts (v.p.), Zabriskie —35.

The same section being still under consideration,

Mr. Pickel moved to amend the second paragraph, by striking out the words "and six judges";

Which was disagreed to.

Mr. Child moved to amend the same paragraph, by striking out the word "six" wherever it occurs before "judges", and inserting "ten"; these judges might be all lawyers, and that was not intended.

Mr. R. B. Thompson asked if the *ten* judges might not all be lawyers as well as the six.

And on this question the yeas and nays were demanded, and

It was determined in the negative, as follows, *viz:*

Yeas. Mr. Child, Connolly, Fort, Haight, Hibbler, Holmes, Jaques, Marsh, Mickle, Naar—10.

Nays. Mr. Allen, Bell, Brick, Browning, Cassedy, Cattell, Clark, Condit, Edsall, Ewing, Field, Gilchrist, Green, Halsted, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Westervelt, Williamson (pr.), Wood,

Wurts (v.p.), Zabriskie—43.

The first section being still under consideration,

Mr. Parker moved to amend the second paragraph, by striking out the words "six judges" and inserting "the members of the Senate." It has been urged, and the Convention by their vote just now have asserted that members of the legal profession should form a part of this Court. The Justices of the Supreme Court, it is said should be these, as most of the appeals will be carried from their decisions—The Justices are a body of men associated together and it is natural that they should imbibe the same opinions and come to the same conclusion, and the decision of one will be generally the decision of all. If then, in matters of law an appeal is taken to the Court of Errors, the members of the bench who gave the opinion are excluded from voting, and the question is determined without the votes of the Judges of the Supreme Court. But it is intended to obviate this by the appointment of six Judges, and they are to be appointed by the Governor and Senate—Now it is my opinion that in matters involving the rights and interests of all the people, the people should have a voice in the selection of the Judges who are to decide upon their rights, and I know no body of men better qualified than those whom they have selected to protect their rights in the upper House. They will be men of the best standing in society, and more than that, tho' I may be deemed heterodox in the opinion, they will be men acquainted with the notions of the people as to the meaning of the Law. Better acquainted than a man who shuts himself up in his closet all day, and who can only be called a black letter lawyer. This Court will have the aid of the Chancellor in one case and of the Judges of the Supreme Court in the other.

Mr. Condit—Will not the Senators be elected more with a view to their Legislative power and the appointing power than to their duties as Judges?

Mr. Parker. I cannot tell that. The people must answer that when they elect them. This argument of distrusting the people is incompatible with the theory and practice of our government. If all the Judges of the Courts below are appointed by the Governor, let the people choose at least a part of that Court which is to decide finally on all litigated matters. Members will be patriotic—they will be attached to our institutions—they will be honest and upright, and let them I say be judges of this Court. I am surprised at the tenacity with which gentlemen of the legal profession advocate the position that no one is fit to be a judge but a member of the Bar. I respect the members of the Bar—I entertain a high opinion of them, but I don't think that this body of 1 or 200 men

should be all from which to select all the Judges.

Mr. Green. This, sir, is a most important subject. The vote we are about to cast is more intimately connected with the justice—with the peace—with the principles and jurisprudence—with the quiet, with the safety of the people and their rights, than the vote on any other question which has been or may come before us.

How shall this Court be organized, so as to secure the most permanent and settled adjudication of questions, in such a way that the law shall be settled and the people shall understand it? The gentleman, sir, professes to go back to the old Court, and demonstrates it the people's Court. I am at a loss to know how it is the people's Court. What does this mean? All the Courts are Courts of the people. But why not, as my worthy friend from Middlesex proposes, do away with all Courts, and have these things settled at the Town Meetings. Why not settle all questions by the town vote?

Mr. Jaques. I did not propose to abolish the Courts: only to reform them.

Mr. Green. One great fundamental principle of our Constitution is that the three departments of government, Legislative, Judicial, and Executive should be kept separate and distinct. You have declared this in another part of this instrument, and yet search the files of this House, and you will find that complaints have been constantly made that they have been so blended, no one can say where the line is drawn to separate them—and with this principle engrafted on the Constitution you propose to bring into this Judicial tribunal one entire branch of the Legislature. If this is right, the fundamental principle we have declared, is wrong. Suppose the Senate to be composed always of the most competent, the best informed, the most talented men, and a question comes up on the construction of a law which they have passed. Where then is your tribunal? The same men who passed the law are to say it is unconstitutional and yet gentlemen are found in this Convention to advocate this motion.—If there was any thing to be astonished at, this would astonish me.

But another ground is taken. That the Lawyers adhere with tenacity to the doctrine that they alone are competent to pass on legal questions. I must confess, sir, I did not expect the attack on members of the bar from the quarter whence it has come. I have heard from several quarters, the assertion that Lawyers considered themselves a separate class of men. Not worthy to be trusted—clinging to power—aliens in fact to the other classes of the community. I had heard all these things, and I remained quiet. I thought sir, it was a jest—a passing joke. I knew it

was always a popular topic for an electioneering speech. But, sir, grave, intelligent honorable men in this Convention have asserted it, and insisted that they are better judges of the Law than men who have devoted a life time to its study. The gentleman from Burlington has said it, and I ask him, would he trust a man to put bark in his tan vat without having had experience? Is there a member here who would trust a man to shoe his horse without experience? Would you trust a man to make a shoe who had not learned his trade—or to make a nail? or would the farmer trust a man who had no experience—or the carpenter, unless he had served an apprenticeship? Or would any member trust a physician who had never studied medicine, unless indeed he goes on the doctrine that the less a man knows about the human frame, the better Doctor he is. No sir, no art or trade is to be trusted without instruction. But Law and Equity requires no study! Law and Equity, the noblest of all sciences—of this a man who knows nothing is as competent to judge as he who has devoted his years to it!

Sir, the gentlemen who made this assertion do not believe it in their hearts. They know that is unfounded—that it is false. I know it is the custom when declaiming for political effect, to denounce the Law and Lawyers, but sir, when a question of Law arises where will they go then? Will they go to their next door neighbor, to the mechanic, to the farmer? No sir? If there is a good Justice of the Pleas within his reach he will go to him, and why? Because he has devoted his time and attention to it. Or he will go to a lawyer. But will he go to a young and inexperienced Lawyer? Not at all. He will seek out some venerable man like our worthy President, whose years have been devoted to his profession. Sir, they all go to the Lawyers, and the very men who denounce them go to them for opinions as to what they shall do with their suits.

Sir, I claim to be only an humble member of society. Like every other man I have my trade as he has his—for the Law is as much a trade as any other profession or calling, and I know not why it should be made the basis for grave discussion when considering questions of constitutional law.

But sir, let me now call attention for a few moments to the Court of appeals as it is now constituted in New Jersey. The gentleman has said it was a valuable Court. I have never sir, had the honor of a seat there, but I have been before it as an advocate at the bar. Scarcely a term has passed for ten years that I have not had a cause to argue before it, and I do say, though you may call it the people's Court if you will, there never was a more unpopular or a more unsafe and dangerous tribunal in this State. Sir, it is an old copy of the House of Lords in

England, only it is worse than that, for there they yield their judgment to the opinion of the Judges as a matter of course, and the opinion of the 12 Jurors or the House of Lords is the Law of the land.—New York is the only State which has preserved this peculiarity, except New Jersey. And let me ask gentlemen what has this Court settled in the 60 years it has been in existence? I appeal to the Judges present, I appeal to the members of the Bar, I appeal to the magistrates—to the members, has any one heard a decision of the Court of appeals cited as authority? Has that Court ever settled one high principle of Law or Equity? It is true they decided against one of the opinions of Chancellor Williamson, but Chancellor Williamson's opinion stands for all that! It has reversed a decision of Chief Justice Ewing, but that stands too, and it has reversed a decision of Chancellor Vroom, but the opinion of Chancellor Vroom is yet recognized by the Courts. I ask what earthly question has it decided? None Sir. It settles nothing, and I do say if you wish to continue a Court in New Jersey which will be a source of fruitful profit to the bar, keep this Court.

The gentleman from Burlington says it is a valuable Court and that the members will discard the Law and decide on principles of equity, and the gentleman from Essex says the best and most learned of Judges will differ and he instances one case and draws the conclusion that others are more competent to pass on legal questions than Lawyers. Sir, the gentleman does not believe it himself.

Mr. Naar. I call the gentleman to order. He has no right to assert that I say any thing which I do not believe. I say nothing which I cannot support and which I do not mean. It is an insult, sir, to my understanding.

Mr. Green. I suppose the gentleman contends that nobody is to be insulted but Lawyers here—Sir, I ask that gentleman if he were to have the opinion of a Kent, a Story, and Marshall, opposed to that of these honest intelligent farmers, on a question of constitutional Law, which would he prefer?

Mr. Naar. The three Judges sir, of course. But it is grown into an axiom that the best Lawyers make the worst Judges.

Mr. Green. I admit, sir, that does happen. A man who may be eloquent at the bar, a successful practitioner, may not make the best Judge. We have seen that exemplified in the case of the eminent Irish barrister, who occupied the wool sack for six months, but long enough to convince the world that the most able, the most talented, the most eloquent lawyer may break down as a Judge. But sir, you do not choose your Judges simply because they are Lawyers. They are chosen because

they are the very best that can be selected. I regret that the gentleman does not believe in his heart what he says, and I know that if he was in any difficulty he would not have to go out of this Convention to find the lawyer he wishes to consult.

Mr. Naar. I go to a lawyer for his opinion, and not for justice.

Mr. Green. Well, sir, it is the same with the gentleman from Middlesex, who has spoken so harshly of the lawyers. He has been to law, and has lost his cause, and without the most remote intention of being personal in the allusion to any gentleman, I must say I think the old saying is particularly applicable to the expressions which have been used with reference to lawyers—

The Rogue ne'er feels the halter draw
With good opinion of the law.

Another feature rendering the Court as proposed to be constructed objectionable, is the mode in which politics mingle in it. Every man who has been here during its sittings knows that from its peculiar organization party first must touch it and if it does not pollute the minds of the members the individual who loses his cause will think it does, and will say that a party influence has caused the decision. Let gentlemen look at the decisions of the Supreme Court of the U.S. Who is there of all parties throughout the land, does not look to them with awe? Not with the awe such as they might feel at the fiat of a despot, but the awe of freemen before sound judgment and well adjudicated equity. Who does not remember Marshall and Story and Thompson and Washington—and here too where the spirit of Paterson and Stockton are hovering over us, the pride and glory of the State—whom all have honored, all respected for their decisions in this very hall, we are told Lawyers are not to be trusted!

There may be—there have been bad Lawyers who were not to be trusted—we have had a Jeffries and a Coke to curse the bench, but we have had others in whom I glory as a man and as a Lawyer, and yet we are told we must have a court without Lawyers!

I have said nothing with regard to any one else. I have only appealed from feeling and prejudice to the sound judgment and honest conviction of members. If I had a horse to be shod, I would take him to a blacksmith and bow my head in silence while he pursues his trade. If I were on trial myself, I should choose for a jury these very men and trust them to pronounce on life and death. There are men of sound judgment in every rank of life—we claim no particularity, no exclusiveness, but when it is said that a man who has devoted his life to the study of the law, is less fit to pass on questions growing out it, I cannot accede to that.

Mr. Green proceeded to consider further objections to the Court of Errors as thus constituted. The certainty that politics must weigh in it. The effect which great causes to come before that Court might have on the elections in a county, or throughout the state. The great delay in the prosecution of causes, instancing cases which had occupied two or three weeks, when they should not have taken so many days. The enormous expense to suitors consequent upon these delays. The various influences which may be brought to bear on Senators even without their knowing it, and the additional expense to the state, and he concluded by stating that he would withdraw his opposition if gentlemen could cite one single decision of the Court of Errors of this state in which a principle of law had been settled.

[J]On motion of Mr. Ewing,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

[C]The Convention resumed the consideration of Mr. Parker's motion to strike out the six judges as a part of the Court of Errors and Appeals, and to substitute therefor, the members of the Senate.

[A]Mr. Parker said he had made the proposition in good faith and with the best intentions—because I believed it to be a better mode of constituting the Court, than that reported—because under it the State has prospered for a century and because I have not seen those great evils in the old Court which have been depicted. On the contrary every thing has prospered—our lives and liberties have been protected, and such would not have been the case if all the evils which have been mentioned had been realized. I adverted to the fact that if errors have crept into that Court, we have already provided that the Chancellor and the Justices of the Supreme Court shall constitute a part of it. I did it with fairness, and I regretted to hear the gentleman say that no persons were proper to be members of that Court unless they were learned in the law; and I did say that it did not look well, coming from that profession, that they should claim to be the sole Judges between man and man in this Court. The gentleman said that the old system was corrupt and their decisions were determined at the Taverns.

Mr. Green. I did not say corrupt, sir.

Mr. Parker. I know the gentleman did not use the word; but what is corruption? Is it not corruption to decide cases for political purposes

as the gentleman says? I repel these charges; and believe that there has been as much integrity and honesty in that Court as in any other. It is constituted as I propose, in New York; the Constitution of which State was one of the last adopted; and I have the opinion of gentlemen learned in the law that it is one of the best Courts in that State.

I did not impeach the bar. I have always been taught to believe in their integrity and honor: But I say, standing here as a member of this Convention; let them be what they may, they have no right to be the exclusive judges; and the bar shall not govern the whole State, while I can prevent it. My fellow citizens bear the burden of the government, and I have great confidence in their integrity and honor.

Mr. Ryerson called the previous question.

Mr. Allen hoped he might be allowed a word in reply.

Mr. Ryerson withdrew it for that purpose.

Mr. Allen was surprised this morning to hear the gentleman from Mercer single him out, for his attacks upon the profession. He had said nothing disparaging to lawyers. He was on the Committee which made this report, and had sustained it. After some further explanations between Messrs. Green and Allen,

Mr. Ryerson renewed his call of the P.Q.

Mr. Connolly wished to offer an amendment.

Mr. Hornblower. No, sir. Let us have the previous question as it has been called.

[G]Mr. Ryerson . . . withdrew [the call] at the request of Mr. Connolly, who moved to amend so as to strike out six as the number of judges and insert ten judges, two to be elected in each congress district, [J]for the term of six years, at the annual election for state officers.

Mr. Child moved to amend the same, by striking out the first word "six" [judges] and inserting "eight"; and also by striking out the second "six" [years] and inserting "four."

[G]Mr. Ryerson renewed the call for the previous question; and it was seconded.

[A]Here occurred a scene of confusion upon points of order, &c.

[J]And on the question, shall the main question be now put?

The yeas and nays were ordered, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brick, Browning, Cassedy, Cattell, Child, Clark, Connolly, Edsall, Elmer, Ewing, Field, Fort, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Lambert, Marsh, Mickle, Neighbour, Ogden, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Swain, J. R. Thomson, R. P. Thompson, Vanarsdale, Wills, Wurts (v.p.), Zabriskie—46.

Nays. Mr. Condit, Hornblower, Parker, Ten Eyck, Westervelt—5.

The question then recurring on the amendment under consideration at the adjournment of the convention this morning, to strike out, in the second paragraph, the words "six judges" and insert "the members of the Senate",

The yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Edsall, Fort, Haight, Jaques, Lambert, Mickle, Neighbour, Parker, Pickel, Ryerson, Wills—11.

Nays. Mr. Allen, Bell, Brick, Brown, Browning, Cassedy, Cattell, Child, Clark, Condit, Connolly, Elmer, Ewing, Field, Gilchrist, Green, Halsted, Hibbler, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Marsh, Naar, Ogden, Parsons, Pitney, Randolph, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Westervelt, Wurts (v.p.), Zabriskie—43.

The question then being on agreeing to the amendment first offered this afternoon [Mr. Connolly's, for ten judges and terms of six years],

The yeas and nays being demanded,

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Connolly, Edsall, Fort, Hibbler, Jaques, Mickle, Naar, Neighbour, Parker, Pickel—10.

Nays. Mr. Allen, Bell, Brick, Brown, Browning, Cassedy, Cattell, Child, Clark, Condit, Elmer, Ewing, Field, Gilchrist, Green, Haight, Halsted, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Ogden, Parsons, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Westervelt, Wills, Wurts (v.p.), Zabriskie—44.

The question then being on the amendment secondly offered this afternoon [Mr. Child's, for eight judges and terms of four years], the same was disagreed to. [The Advertiser attributed this amendment to Marsh.]

The amendments made to the remainder of the section, in committee of the whole; were then severally agreed to.

The first section being still under consideration,

Mr. Ogden moved to amend the fourth paragraph, by striking out the word "such" before "per diem" and insert "a"; and also, by striking

out the words "as shall" and inserting "to";

Which was agreed to.

Mr. Ryerson moved to amend the same section, by striking out the words "or judgment", near the end of the section;

Which was agreed to.

[G]Mr. Green moved to strike out the clauses providing that neither the chancellor nor the judges of the Supreme Court should have a voice on appeals or writs of error from their own decisions.

Messrs. Green and Browning advocated the motion; Mr. Ogden rose to reply, when Mr. Green said he was just informed that this motion had been made during his absence, in committee of the whole, argued and negatived. He begged pardon of the Convention for having renewed the subject, and withdrew his motion.

[J]Mr. Mickle moved to strike out all after the first paragraph [thus eliminating the Court of Errors entirely].

[A]He remarked: It will be no Court of Errors at all. Better let the decision of the Supreme Court be final than to trust these six Judges picked up the Lord knows where!

[J]Which was not agreed to, [A]ayes 1.

[J]The section, as amended, was then adopted.

The second section being under consideration, the amendment made to the same in the committee of the whole, to strike out, in the first paragraph, the word "impeaching" and insert "impeachment", was agreed to.

The other amendments made to the same, in committee of the whole, were then agreed to collectively.

[A]Mr. Vanarsdale moved to amend the 2d section, which provides that "the person impeached shall be suspended from exercising his office until his acquittal," by confining it to the Chancellor and Justices of the Supreme Court. He thought it might cause difficulty to include ministerial officers.

Mr. Hornblower asked if the Treasurer or Attorney General should be allowed to act after charges had been preferred against them for official misconduct?

Amendment not agreed to.

Mr. Parker asked if giving the Senate power to try impeachments did not mingle the Legislative and Judicial Departments, and if they were competent to try these important officers and not to settle disputes between man and man?

Mr. Sickler hoped the questions would be answered by taking the question on agreeing to the sec.

Mr. Parker. That is the only answer that can be given!

[J]The section, as amended, was then adopted.

The third section being under consideration,

Mr. Ryerson moved to amend the same, by striking out all after the word "chancellor";

Which was agreed to.

Mr. Jaques moved to strike out the section. [A]He said he had been accused of wishing to dispense with all courts and lawyers. He had supposed he would be misrepresented and had taken the precaution to write down what he said this morning and his remarks had already gone to the printers. He wished that gentlemen had taken a sober second thought and had written down what he had said.—He wished both to go out to the world and let the world judge between us.

Motion not agreed to.

[J]The section, as amended, was then adopted.

The fourth section being under consideration,

Mr. Ogden moved to amend the same, by inserting, after "court", the words "or circuit courts";

Which was agreed to.

[G]Mr. Hornblower moved to strike out the clause prohibiting the removal of orders, &c., of the Orphans' Court into the Supreme Court. Mr. Randolph opposed the motion, and it was disagreed to.

[J]Mr. Field moved to amend, by inserting, after "surrogate general", the words "and judge";

Which was agreed to, and the section, as amended, was then adopted.

The fifth section, which was substituted in committee of the whole, being under consideration, as follows:

"The supreme court shall consist of a chief justice and four associate justices; but the number of the associate justices may be increased or decreased by law, and never be less than two.

The circuit courts shall be held in every county of this state, by one or more of the justices of the supreme court, and shall in all cases within the county, except those of a criminal nature, have common law jurisdiction concurrent with the supreme court; and any final judgment of a circuit court may be docketed in the supreme court, and shall operate as a judgment obtained in the supreme court, from the time of such docketing.

Final judgments in any circuit court may be brought by writ of error into the supreme court, or directly into the court of errors and appeals in the last resort."

Mr. Ogden [Randolph, according to the Gazette and Advertiser] moved to amend the same, by inserting, after "supreme court", the words "or a judge appointed for that purpose." [He] [A]said it may be thought necessary by the Legislature hereafter to reduce the Judges of the Supreme Court to *three*, and to appoint *three* Circuit Court Judges.

Mr. Clark liked the suggestion: and hoped the Legislature would be left at liberty to change it if necessary.

[J]Which was agreed to.

Mr. Connolly moved to amend, by inserting, after the word "docketing", the following: "The circuit courts shall also be invested with chancery powers, so far as relates to the foreclosure of mortgages within the several counties of this state."

[A]He said he did it at the suggestion of many of his constituents who thought the costs of foreclosing too heavy, and that it operated hard upon the poorer classes of the community.

Mr. Ogden said the Common Pleas already had that power.

Mr. Connolly wanted it in the Constitution.

Mr. Parker said that was a limited power. It only applies to cases between the mortgager and mortgagee only.

Mr. Zabriskie thought there was some force in the amendment and in the reasons given for it, and would like to know what power the Common Pleas had precisely?

Mr. Field replied, only in cases where there are no subsequent mortgages, deeds or judgments. He said the amendment would not reduce the cost.—The Judge will be entitled to the same fees as the Chancellor. He thought it had better be left to the Legislature, which body can reduce the fees if necessary.

Mr. Naar could see no advantage in changing the power from one Court to another.

Mr. Zabriskie and Mr. Parker contended that the Legislature would have no power to give this jurisdiction to the Circuit Court, if we establish a court of Chancery by the Constitution, for that is one of their powers.

Messrs. Green, Hornblower and Clark replied that it might.

[J]And on this question the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Bell, Brick, Cassedy, Connolly, Dickerson, Fort, Haight, Hibbler, P. B. Kennedy, Laird, Lambert, Mickle, Neighbour, Parker, Pickel, Pitney, Ryerson, Stokes, Swain, J. R. Thomson, R. P. Thompson, Wills, Zabriskie—23.

Nays. Mr. Brown, Browning, Cattell, Child, Clark, Condit, Elmer, Ewing, Gilchrist, Green, Halsted, Hornblower, R. S. Kennedy, Marsh, Naar, Ogden, Parsons, Randolph, Schenck, Sickler, Spencer, Stites, Stratton, Ten Eyck, R. P. Thompson, Vanarsdale, Westervelt, Wood, Wurts (v.p.)—29. [The Journal listed R. P. Thompson on both sides.]

The section, as amended, was then adopted.

The sixth section being under consideration,

Mr. Randolph moved to postpone the same; which was disagreed to.

The question being on agreeing to the amendment made, in committee of the whole, to strike out the words, "One of the justices of the supreme court for the time being shall be one of the judges of the orphans' court now existing in and for the several counties of this state, in all cases except every regular term of said orphans' court when no circuit court is held in the county, such orphans' court may be held without a justice of the supreme court", and insert the following: "The orphans' court in each county of the state shall be held by the judges of the inferior court of common pleas appointed under this constitution, or by any three of them."

[A]Mr. R. P. Thompson said his constituents and the people generally were very anxious to know how we should constitute the Orphans' Court, which was one of the most important courts in N. Jersey. He wished a Supreme Court Judge to be on the Bench to advise the other Judges when necessary, and proceeded to advocate the original report.

Mr. Marsh replied, that it would be impossible for the Supreme Court Judges to attend to the duties unless their number was increased. [G]During the discussion Mr. Pickel moved the previous question; but the convention refused to second it. [A]The subject was farther argued.

[J]And the yeas and nays being demanded,

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brick, Cassedy, Child, Connolly, Dickerson, Ewing, Fort, Green, Haight, Halsted, Hibbler, Holmes, Jaques, R. S. Kennedy, Laird, Lambert, Marsh, Naar, Neighbour, Parker, Parsons, Pickel, Pitney, Ryerson, Sickler, Stites, Stokes, Swain, J. R. Thomson, Westervelt, Wills, Zabriskie—34.

Nays. Mr. Brown, Browning, Cattell, Clark, Condit, Gilchrist, P. B. Kennedy, Mickle, Ogden, Randolph, Schenck, Spencer, Stratton, Ten Eyck, R. P. Thompson, Vanarsdale, Wood—17.

Mr. Ryerson moved to amend the same section, by striking out the words "appointed under this constitution." [A]He said we were to appoint but one [Common Pleas judge] in each year, and would therefore have no Orphans' Court for three years.

Mr. R. S. Kennedy had an amendment to propose to the next section to remedy that—to appoint five Judges of C. P. under this Constitution, at the next session of the Legislature, and from this time till then, can be provided for in the Schedule.

Mr. Randolph warmly opposed the amendment. He alluded to the number of Judges—(often 25 or 30) and to the fact of their being mere party Judges, as one of the greatest evils in the present Orphans' Court system. He hoped the words would be retained and that the amendment of Mr. Kennedy would be adopted.

Mr. Child replied, and feared that it would array the present Judges of the Common Pleas against the Constitution.

Mr. Naar concurred with Mr. Randolph, and thought differently with Mr. Child.

Mr. Green alluded to the number of Judges of the Orphans' Court as one of its greatest evils. He said, there are crying evils there and the only question is whether we shall begin to remedy them at once. He thought the present Judges would rejoice at it, instead of being opposed to it, and he was glad that the gentleman from Essex, himself a Judge, concurred with him. He had talked with many of the Judges, and they were all in favor of it. Mr. Green opposed the amendment warmly.

Mr. Ryerson and Mr. Zabriskie thought it would create unpleasant distinctions between the present and the new Judges. They said we had already determined to take away no commissions, but this distinction would be worse than doing so.

Mr. Randolph differed entirely. It would only be saying that "there are great evils in the Court now, and we will now reorganize it," and he insisted that the Judges would not be dissatisfied with it.

[J]And the previous question being demanded, there was a second:

And on the question, shall the main question be now put? it was decided in the affirmative.

The question then being on agreeing to the amendment, the yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Bell, Browning, Cassedy, Child, Connolly, Ewing, Fort, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Neighbour, Ogden, Parker, Pickel, Pitney, Ryerson, Sickler, Stokes, Stratton, Swain, J. R. Thomson, R. P. Thompson, Vanarsdale, Wills, Wurts (v.p.), Zabriskie—31.

Nays. Mr. Allen, Brick, Brown, Cattell, Clark, Condit, Elmer, Gilchrist, Green, Halsted, Hornblower, R. S. Kennedy, Marsh, Naar,

Parsons, Randolph, Schenck, Spencer, Stites, Ten Eyck, Westervelt, Wool—22.

The sixth section being still under consideration,

Mr. Hornblower moved to amend, by inserting, after the word "three," the words [H]"not more than five" [G]judges of the Common Pleas should hold the Orphans' Court. Not agreed to.

[A]Mr. Ogden moved to strike the whole section out. He said it was intended to improve the Orphans' Court, but it is left now precisely as it is constituted by statute.

[I]*Ordered*, That the whole section be stricken out.

The seventh section being under consideration, the same as amended in committee of the whole, by substituting the following, in lieu thereof, was agreed to.

Sec. VII. "There shall be no more than five judges of the inferior court of common pleas in each of the counties of this state, after the terms of the judges of said court now in office shall terminate. One judge for each county shall be appointed every year, and no more, except to fill vacancies, which shall be for the unexpired term only.

The commissions for the first appointments of judges of said court shall bear date and take effect on the first day of April next. And all subsequent commissions for judges of said court shall bear date and take effect on the first day of April in every successive year, except commissions to fill vacancies, which shall bear date and take effect when issued."

The eighth section, which was substituted, in committee of the whole, for the section as originally reported by the committee, being under consideration, as follows:

"There shall be elected under this constitution, two, and not more than five justices of the peace, in each of the townships of the several counties of this state, and in each of the wards of the city of Newark.

Whenever the population of a township or ward of the city of Newark shall not exceed two thousand, it shall have two justices only; when more than two, and not exceeding three thousand, it shall have three justices only; when more than three, and not exceeding six thousand, it shall have four justices only; and when more than six thousand, it may have five justices.

The population of the townships in the several counties of the state, and of the several wards in the city of Newark, shall be ascertained by the last preceding census of the United States, until the legislature shall provide by law some other method of ascertaining it."

Mr. Parsons moved to amend the same, by striking out, at the end

of the first paragraph, "of the city of Newark" and inserting "in cities that may vote in wards";

Which was agreed to.

Mr. Parsons moved further to amend the same, by striking out the words "in the city of Newark" where they occur in the remainder of the section;

Which was agreed to.

Mr. Parsons moved to further amend the same, by adding, after the words "five justices", the following: "*provided*, that whenever any township in this state, not divided into wards, has a population of more than nine thousand inhabitants, the electors of such township may elect an additional justice for each three thousand inhabitants above six thousand";

Which was agreed to.

Mr. Ogden moved to amend the same, by striking out the word "shall" after "there" in the first paragraph; the same word before "have two justices", "have three justices", and "have four justices", and insert "may" in lieu of each severally; and also to strike out the word "only" where it occurs;

Which was agreed to.

[A]Mr. Hibbler moved to strike out all that part of the article which provides a ratio for the number of Justices, so as to allow each township and ward to elect from 2 to 5 as they choose. He said the township in which he lived was a very large one, with a village in either end of it, and would not be entitled to more than 2 Justices, which would be very inconvenient. Many pauper cases too, occur there, and this will compel the overseer to go 4 or 5 miles to find two Justices. He had received a letter from a highly respectable source there, saying that the people strongly desired the change.

Not agreed to.

Mr. Ryerson moved an amendment that "each township which has 2,000 inhabitants may have 2 Justices—between 2 and 4,000, four Justices, and over 5,000, five Justices."

[J]Which was agreed to.

The section, as amended, was then agreed to.

The ninth section being under consideration,

On motion of Mr. Ryerson, the same was ordered to be stricken out.

On motion of Mr. Ryerson,

Ordered, That the report of the Committee on the Judiciary Department, as amended and adopted, be referred to the select committee appointed to arrange and unite the several reports.

Mr. Mickle moved to reconsider the vote by which the fourth section of the report of the Committee on the Executive Department [qualifications for Governor] was adopted;

Which was not agreed to.

The convention adjourned till to-morrow morning, at nine o'clock.

[J]THURSDAY MORNING, 20th June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Starr.

[A]After the minutes were read, it appeared there was some error as to the motion of Mr. Mickle to re-consider Sec. 4 of the Executive Report, and there being some doubt, the question on re-considering was taken again and rejected.

Mr. Mickle presented [J]four [A]petitions on the subject of the qualifications for Governor, signed by about 400 citizens of Camden Co., [J]praying that the constitution provide that the governor shall be a native-born citizen of the United States;

Which were read, and,

On motion of Mr. Ryerson,

Ordered, That the same do lie on the table.

[A]Mr. Sickler presented a petition which had been handed to him asking that an article might be added to the Constitution protecting the shad fisheries from persons using gill nets. It created much laughter, but as it was anonymous, it was laid on the table, after being half read.

[J]On motion of Mr. Zabriskie,

The convention proceeded to the consideration of the report of the Committee on the Appointing Power and Tenure of Office, with the amendments made thereto in committee of the whole.

The first article, relative to the appointment of "militia officers," being under consideration, the first section of the same was agreed to, without amendment.

The second section of the same article was adopted, without amendment.

The third section being under consideration, the amendments made

in committee of the whole to the same, were agreed to, and the section, as amended, was adopted.

The fourth section was agreed to, without amendment.

[A]Section 5—Mr. Dickerson proposed on this section to open the discussion upon this new appointing power, which he was opposed to in toto.

[G]Mr. Dickerson said that placing the appointing power in the hands of the Governor and Senate was a novel thing in New Jersey. The old appointing power by joint meeting of the two houses of the legislature, had been exercised for 68 years, with advantage to the country.

It is contended that the appointing power belongs to the Executive. That it is not necessarily so, is evident from the fact that our governors, for nearly 70 years, have not been permitted to exercise that power, and yet they have been, for all that time, the Executive of the State. The appointing power will belong to the executive, if the people, by their Constitution, choose to give to him, not otherwise. There is no inherent power in the executive. It is said the legislative and executive powers should be kept distinct; that the joint meeting of both branches of the legislature should not be entrusted with the appointing power; and yet, we are about to trust the Senate, one branch of the legislative power, with the appointing power. In this, gentlemen contradict themselves.

It is said the governor will be the representative of the whole people, responsible to them all. Will it be so? I think I have shown, when this subject was in committee of the whole, that he will not be the representative of the whole people, but of the dominant party, and will hold himself responsible to them alone.

It is said the acts of this representative of the whole people, will afford a beautiful illustration of the principles of democracy. I have read in some ancient author, that the happiest people are those *sub pie rege*, under a pious or good king; and this would be true, if we could always have good kings—if we could have angels for kings. But we cannot always have good kings, nor good governors; and this "beautiful illustration of democracy," if carried out to its full extent, will end in monarchy.

I have been astonished at the accounts which have been presented to us, of the corrupt and corrupting influences operating upon the joint meeting. I have seen a great deal of joint meetings, and have witnessed nothing of the kind. There has been an evil, I will admit, in the number of appointments, but that was rather the fault of the people than of the joint meeting.

We have provided a remedy for this evil, by limiting the number of officers; and I am now more willing to trust the appointments to the joint meeting than to any other power.

The gentleman from Mercer, (Mr. Field) gave us a vivid picture of his own experience as a member of the joint meeting—that on one year he had not been troubled with applications for office—I presume that on that year he was in the minority—but that on the next year, when I presume he was in the majority, he was pursued, dogged, hunted, run down; that he had no peace, no repose, had to shut himself up in his room, and lock the door. This persecution, no doubt, was on the part of his political friends, a portion of the same band who thronged around President Harrison, who hunted, pursued, dogged, run down, and killed him. In his extreme agony he was heard to exclaim "they will kill me; they will kill me."

There was no fault on the part of the President, nor of the gentleman from Mercer, as a part of the appointing power. The fault was on the part of their pursuers.

But if the gentleman from Mercer suffered such persecution when having but a small share of the appointing power, what is he to suffer when he comes to be governor! I fear his fate, will be somewhat like that of Actaeon, who was hunted, pursued, run down, and devoured by his own hounds.

Much has been said of King Caucus—he is supposed to control the joint meeting—that all appointments are made through his corrupt and corrupting influence. And will his reign be at an end, if the appointing power be lodged in the Governor and Senate?

Will he not decide who shall be recommended to the Governor to nominate to the Senate? Every appointment will be made in caucus, as much so as it ever has been. King Caucus will be as busy as before; associating with better, better company than he has been accustomed to, as the Governor [will be elected] for three years, and a Senate for three years—a different order of legislators, whose importance and dignity are increased by extending their term of office. He will be a little more of a dandy, but not the less efficient—indeed, I think he will be much more so, as he will attend the circuit courts, and go round the state.

I think the appointing power can no where be more safely lodged than with the joint meeting, where it has been exercised for nearly 70 years. If you take away this part of our venerable Constitution, nothing of importance will be left. The people of New Jersey are proud of their old Constitution. They consider it a monument of the

wisdom and patriotism of the statesmen who formed it. In that Constitution its authors fearlessly declare, that as George III, King of Great Britain, had refused protection to these colonies, and made war upon them—"all civil authority under him was at an end." This was a declaration of independence made to the world, two days before that made by the Congress of the United States, on 4th of July 1776. Every Jerseyman cherishes the memory of the illustrious band by whom this Constitution was made, not one of whom now remains to overlook our acts, or stay the hand of the ultra reformer.

I feel the utmost repugnance to vesting the power of nomination to office in any one man. As a citizen of New Jersey, heretofore I could make nominations to the joint meeting, if I had a single friend in that body. Such has been the privilege of every citizen of the state. Sir, I will not willingly give up that privilege to any man; and if it shall be taken from me, I shall feel that my privileges as a citizen of New Jersey are abridged.

[J]Mr. R. S. Kennedy moved to amend, by substituting the following:

"Major generals shall be elected by the field officers of their respective divisions". [According to the newspapers Kennedy's motion was for the election of major generals by the brigadier generals, while Lambert wished to have them elected by the field officers and made such an amendment to Kennedy's amendment.]

[A]Mr. Zabriskie suggested that as the Governor was Commander in Chief, it was peculiarly appropriate that he should have the appointment of those officers immediately under him, and to whom he must look in cases of emergency.

Mr. Randolph was opposed to it. The field officers would of course be in favor of their Brigadier not only from personal friendship, but because his election would make promotion for them.

Mr. Parsons was in favor of the section as reported.

The amendment was not agreed to.

[J]Mr. Dickerson moved to amend, by adding to the section the words "and House of Assembly in joint-meeting";

Which was not agreed to.

Mr. Hornblower moved to amend the section, by striking out "nominated" and inserting "appointed"; and also, by striking out all after the word "governor";

Which was disagreed to.

The section was then adopted, without amendment.

The sixth section was agreed to, without amendment.

The seventh section was adopted, without amendment.

The eighth section was agreed to, without amendment.

The ninth section being under consideration, the amendment made to the same, in committee of the whole, was agreed to, and the section, as amended, was adopted.

The tenth section being under consideration, the amendments made to the same, in the committee of the whole were agreed to, and the section, as amended, was adopted.

The eleventh section being under consideration, the same was ordered to be stricken out, [A]as it is provided for in the schedule.

[J]The second article, relative to the appointment of "civil officers", being under consideration,

The amendment made, in committee of the whole, to the first section was agreed to.

Mr. Ten Eyck moved to amend the first section, by striking out all after the words "shall be" in the first clause, to the end of the same, and inserting the following: "appointed by the Senate and General Assembly in joint-meeting, and commissioned by the governor."

[A]Mr. Parsons enumerated the number of officers to be appointed by the Governor and Senate, by the Joint meeting and the people, and if the friends of the Joint meeting were willing to accept of the appointment of the Judges of the Common Pleas, he would vote for that.

Mr. Child expressed sentiments in favor of the Joint meeting, but was willing to accept a compromise.

Mr. Green. I had the misfortune to be absent, Mr. Chairman, when this subject was under discussion before, and have therefore had no opportunity of expressing my sentiments on this point, and I am called on unexpectedly, as I had supposed another subject would be under consideration this morning. Mr. Chairman I have yet to hear any good reason why the appointment of these high offices should be taken from the joint meeting, and I concur with the sentiment of the gentleman from Morris, (Mr. Dickerson) that such a change is not demanded, and will be one, if made, at war with the best interests of the State.

Sir, it is said that the appointments in joint meeting have been corrupt, and that assertion is made by gentlemen who have been in the joint meeting, but Sir, though I have never had a seat in the joint meeting, from what little I do know of it, I know of none of the evils, none of the corruptions which have been charged. I do not pretend to say that objectionable appointments have not been made, nor do I deny the truth of the allegations which have been urged, but I do say there is no mode of appointment which will not be in a measure cor-

rupting and corrupt and what then are we to gain by the changes. Look at the examples afforded us by the Federal Government, and by our sister States, where the appointing power is vested in the Executive. Go only across the River, and say whether the appointments by the Executive there have not been corrupt, and I wish gentlemen to understand that I speak now with reference solely to the officers provided for in this section, the highest Judicial officers. I cannot consent to compromise on a question of principle. I may compromise with some peculiar notions of my own, but on questions of principle I cannot do it. The idea is to take the appointment of these highest Judicial officers from the joint meeting, and give them to the Executive and Senate. From the earliest period of the existence of the Government, these officers have been appointed in joint meeting, and I ask, have they not, almost without exception been unexceptionable? I ask it boldly, Sir, with all delicacy have the appointments of the Governors for the last 50 years been honorable to the State and acceptable to the people? I ask have not the incumbents of this office without exception been the very men whom the people had they the choice at the boxes, would have made. Has any State in the Union ever made appointments to this office, more honorable and satisfactory to the people?

If there be any, I have not yet heard of it. Sir, I deny that there is one. With regard, too, to the Judges of the Supreme Court, I ask have not these appointments in the main been unexceptionable and acceptable, and in accordance with the wishes of the people, and, sir, have they not been honorable to the State in every point of view. Will any one pretend to say that there has been corruption in the appointments to these high offices? Will any one say that the office of Governor of this State, or of Judges of the Supreme Court, have ever been sources of bargain or corruption. I deny that such a charge can be made with reference to these officers. I do not deny that with regard to minor offices there has been corruption, but I say I do not know of it, and I repeat I never heard that a Justice of the Supreme Court, or a Chancellor were ever appointed in this State by any undue means.

Sir, the proposition now is, to give the appointment of these highest judicial offices to the Executive, and who is he to be? He may be a plain honest farmer. I hope he will. I am willing such a man should fill that distinguished office. But, sir, what will a man, coming from Cape May, or some remote corner of the State, know of the qualifications of these offices, when compared with the assembled wisdom of the State in this body? Where the representatives are selected from every county to come here and vote upon questions of vital interest

to the people, will they not form a more competent body to make nominations than a Governor thus chosen? They will be acquainted with the wants, the wishes and the feelings of the people in every part of the State, and will anyone pretend to say that an individual chosen from some remote corner of the State will be so well acquainted with these feelings and wants as the members of the joint meeting thus selected?

In regard to his honesty and integrity. Is he to be more honest, less liable to be acted on by the influence of caucus nominations? No, sir. So far from destroying the caucus of which so much has been said, I agree with the gentleman from Morris you elevate it. You take the power from the larger number of men, and give it to the small body of political adherents, the conscience keepers of the Governor. The same power will be found behind the throne. It will still be there to counsel, to advise, and to influence all appointments; and I ask, gentlemen, is not this the case in all those States where this power is vested in the Executive? Is he not influenced in his appointments by the small body of politicians who are ever hanging about the Executive chair, and who will crawl in their own slime to the footstool of Executive power, to secure their end?

Talk of caucus, sir. Look abroad and tell me whether any nominations have been made by any executive more free and independent than have been made on this floor. I admit that place the power where you will, there will be difficulty, but I do say and I say it without fear of contradiction on any good ground, that it exists in greater force in the secret nominations of the Governor.

But it is said further that the Governor will be a responsible person, and that the people will look to him to correct abuses. Suppose he is so. Does that secure freedom from party nominations? Is there an instance within a quarter of a century in the history of the United States where an individual has been appointed to the bench of the Supreme Court of the U.S. who was not a sworn, tried friend of the Executive? I know of no instance where the Executive of a State or of the U.S.—the acknowledged head and leader of a party has dared to nominate to office any man who was not of his own way of thought and feeling, and who would be supposed at least to advance the interests of the party.

And I ask has this been the case with the Joint Meeting. Was not Chief Justice Ewing nominated by the old Democratic Party in 1824, and in 1831, or 32. Did not the same party almost unanimously I believe re-appoint Justice Ford, a political opponent. Look at those who

have been appointed for the last quarter of a century, and tell me where is the man who has been removed but by his own party friends.

I submit then sir, if this Joint Meeting be so bad as has been charged—if it be so corrupt as has been insisted, if it be so vile as has been urged, and that it never has done any thing aright, how is it that these appointments have been made, reflecting honor on the State, and advancing the interest of the people, I insist that as this is a body more honorable—competent, and free from that influence to which I have adverted—it is a body in which the people can have confidence, and in my opinion it is more important that they should have the appointment of these offices, than the appointment of a Governor. Can the people, or do the people nominate a Governor. We know they do not. He is nominated by the party leaders and party leaders and cliques it is said exercise a controlling influence. But sir is it not more easy to bring this influence to bear on one man, than on 50—and is it not more likely that the Governor will be influenced by the band who have secured his nomination?

Sir, I submit that unless good reason is shewn for the change, it ought not to be made. The genteman from Passaic (Mr. Parsons) has shewn us that the majority, and a great majority of the appointments, are now directly vested in the people. That is true I admit, but all the higher appointments are given to the Governor. As to the military officers, you may give them all to him. I have no objections that the Governor should select and appoint without any check his whole military family. But when you reach the civil officers in the State, it is a dangerous gift, and above all, sir, I object to it with regard to judicial officers, and these are the highest judicial offices in the State, and their term is limited to 7 years. Sir, I want the judiciary independent. I want them above all fear—above all reproach—above all suspicion. I ask, sir, if a Judge thus situated has a question before him touching the friends or family of the Executive, or involving the interests of an Executive before he enters on his office, where is the chance for fairness or impartiality? Give to one individual the power of nominating every judicial officer of the highest character in the State, and I ask you will the people—will suitors, feel safe, where the Judge may come in collision with the Executive, or his friends, or family, or his political adherents? Sir, I trow not.

I care not what may be the practice in other States, or in the United States. The vesting of this appointing power of the highest judicial officers in New Jersey in this wise, will not only be a novelty, but a very unpalatable one to the people.

Mr. Green cited instances of several States where these appointments were made in joint meeting, and concluded by expressing his hope that the amendment would prevail.

Mr. Field. I was present Mr. Chairman when this subject was under discussion before and I addressed the Committee at such length giving my views, I shall not feel disposed to trespass further on their kindness, if a single member objects.

Sir, this is a vital question, and I cannot permit the remarks which have fallen from the gentleman from Mercer (Mr. Green) without attempting even in my feeble manner to answer them. He has expressed one sentiment to which I most cordially subscribe, and that is, that in matters of principle there should be no compromise. I am glad it is so, and I trust in relation to this matter there is to be no compromise. I will not say how far I might be willing to go however, for I should sacrifice much for the sake of harmony and union.

The gentleman asks for one single reason for conferring this power on the Governor and Senate; sir, I have a right to ask in reply that he will give me a single reason why it should be conferred on the Legislature. Is it appropriate; does it belong naturally to the Legislature? If so then the burthen of proof rests with me.

I submit sir, that this power does not belong to the Legislature. The gentleman yesterday spoke warmly and eloquently of the imperious necessity for keeping the Executive, the Legislative, and the Judicial departments separate and distinct, and yet today he is quite as warm and as eloquent in favor of clothing the Legislature with the most important of all the executive functions, the appointing power, almost sir, the only power which can be exercised by the Governor and yet he would strip him of it.

The gentleman says this change is not demanded by the people. This is a question of fact however which we cannot decide by discussing it here. I am at issue with him on that point and I repeat sir, that if there is one single question in the formation of a new Constitution on which the people anxiously desire to be heard, it is this very matter. I know sir of hundreds, I might perhaps say thousand who were averse to this revision of the Constitution, yet who were reconciled to it because they hoped that the Legislature would be stripped of the appointing power. I do not pretend to know what may be the state of feeling in Trenton on this subject, but I can say that beyond the bounds of this place, where the power is exercised the people with one accord are in favor of stripping the Legislature of this power. I speak sir the sentiments of the people in the section of the country where

I have resided for some months, and I say unhesitatingly if we adjourn leaving this power in the Legislature, they will feel perfectly indifferent whether the Constitution is adopted or not. They will feel that they have been deprived of their highest anticipations. They will feel that that which has always been considered a blot on our ancient Constitution; that which has been a plague spot remains unerased and unobliterated. But the gentleman asks, has not the power been well exercised for forty years, and he expresses himself in indignant terms against the charges of corruption.

Mr. Green. I said no such thing sir. I referred only, and I said expressly that my remarks were confined to these high judicial offices, and I challenged any one to say that the appointment of any of these had been procured by corrupt means.

Mr. Field. The gentleman yesterday did not seem to be very tender as to the reputation of one branch of the Legislature. He charged that the Senate when sitting as Court of Errors, suffered themselves to be approached with reference to causes before their decision. He charged that causes were decided not only in this Hall, but in the bar rooms. Sir, I will not deny that if the Legislative Council sitting as a Court of Errors under the solemnity of their oath would suffer themselves to be approached on causes pending before them, if they decide causes in the bar rooms of the Hotels—they are unfit to be entrusted with the appointing power.

But sir, the question seems, does this power naturally belong to the Legislature, and is it a power which can be exercised without the most deplorable results. Sir, the poison begins at the fountain head. When a man is put up as a candidate for the Legislature, is the question asked, is he fit, is he capable of making wise laws? No sir, but is he in favor of A.B. who wants to be made a Surrogate, or of C.D. who wants to be a Clerk. That, sir, is the question asked, and the individual is elected with reference to his opinion as to the candidates for office. The members are sent here to make Laws. They may be the best men to make Laws, but the very worst to make appointments.

But the gentleman made a remark yesterday, and I was struck with the truth of it. He asked was it not monstrous that the Senate should be the Court of Errors? That [the] Senate when sitting as a Court of Errors would be called on to pass upon the constitutionality of some law which they had passed, and the answer given by the vote of this Convention said no, they should not sit as a Court of Errors.—But what does he propose today. He asks us to put in the hands of this Senate and House of Assembly the appointing of these very

Judges who pass upon these laws. Sir, I ask if the Senate ought not to form a part of the Court of Errors, ought the Legislature to have the power to appoint these Judges. But there is another matter behind this question. I say, sir, if this appointing power is not given to the Governor and Senate, it will be given to the people. I do not mean to-day, sir, or that this Convention will give it, but the day is not far distant when it must and should be given to them. Sir, the history of the State of Mississippi will be the history of New Jersey if this amendment prevails, and why was it so there? because, sir, the appointing power was in the Legislature, and the people were so disgusted, so indignant at the manner in which appointments had been disposed of at Jackson, they rose in their majesty, and resumed themselves the exercise of this power, so much abused by their representatives, and every officer in the State is elected by the people.

The people of New Jersey will not much longer permit this power to be exercised by the Legislature. They are willing to give it to the Governor for he is their representative, and I declare now most solemnly that I will vote now and at all times to give this power to the people rather than to the Legislature. The theory of our government is this, that the people should exercise every power which they can exercise as well in their collective capacity as by their representatives. This is a proposition to which no exception can be taken. The power of making laws belongs to the Legislature. The power of appointment [belongs] to the Governor, and if there is any reason why it should be taken from the executive it should return to the source from whence it emanated, not only on principle, but for expediency. I should be unwilling sir, to see a Justice of the Supreme Court caucussing for votes of the people, but, sir, there would be something manly, something dignified in the idea of going among the people for their votes. But, sir, when he appears before the Representatives of the people, he reduces himself to a position as disgraceful as a man can place himself. A man who will come into this Hall sneaking and creeping, and pulling the buttons of the members to solicit their votes, is placed in a position which should draw down the scorn and contempt of every honest right minded man in the community. Look sir, at the appointments made by the Executive of the United States from 1789, when we first had the glorious constitution under which we live, down to 1842, and I am willing to compare them with any equal number of appointments made in any kingdom under Heaven. Look sir, at our Judges of the Supreme Court,—look at our representatives in foreign countries. Look at the men who have been placed at the heads

of the various departments, from Washington to John Tyler, and say if they do not present a long line of illustrious patriots who have graced the annals of our country's fame, & who are entitled to the gratitude and reward of their country. Would the gentleman have the appointing power placed in the Senate and House of Representatives? If there is any force in his argument, he must have meant to say that the power of appointment was not well placed in the President and Senate. Place it in both Houses of Congress and you ring the knell of our liberties, and you will have displayed on a more extended theatre the same disgraceful scenes which have been enacted in New Jersey, and which have been harmless, only because the scene of operations was so narrow and contracted. Sir, I will not attempt to portray the consequences which that gentleman and every member of this Convention feels would ensue if this power was placed in the Senate and House of Representatives.

The gentleman has gone across the river for an illustration. I too will go there. The Governor of Penn. has abused the appointing power because there has been no check on him. I am unwilling, sir, to give this power to the Governor without a check, and thus the Senate has been added. It is a wise and salutary provision.

Mr. Field concluded by expressing his earnest hope that the amendment might not prevail.

Mr. Randolph. Mr. Chairman I do not agree with the gentleman on my left. I have voted to give the appointing power to the Governor and Senate with one exception. I am satisfied with the report as it stands, but some gentlemen are anxious to retain the power in the Joint meeting. Not one or two, or three, but several counties give their entire vote in favor of this mode. I am willing to make a compromise in this matter, and to give a portion of the appointments to the Joint meeting, but there seems to be a difficulty as to which shall be given to them, or which they will take. (Mr. R. here enumerated the officers to be appointed by the Governor & Senate—Joint meeting and by the people.)

On the one hand some gentlemen prefer to retain this section as it is, and to give the Common Pleas Judges to the joint meeting. There are 95 to be appointed, and the office is now made one of honor & dignity, & will excite competition. There are 19 to be appointed every year, and will not this tend to keep up in a great measure, the evils we all deprecate, and keep alive the difficulties which have been so eloquently portrayed by the gentleman from Mercer (Mr. Field). There will certainly be two candidates in every county, and they will have

sufficient interest to bring another friend, and I ask gentlemen if this would not revive the old system of log rolling, and restore the old system of corruption. I was strongly against giving any appointments to joint meeting, but am desirous to make concessions in a spirit of conciliation and harmony. I suggest then if the gentlemen would agree to it, to let these Judicial officers be appointed by the Joint meeting, and the 95 Common Pleas Judges by the Governor and Senate.

Mr. Cattell opposed the section, and advocated the amendment, insisting that from all indication of public opinion which had come under his notice, the people did not desire, and were not prepared for so radical a change. He read from several petitions for the organization of this Convention, and concluded that as nothing was said about the joint meeting and the appointing power, the people were satisfied with it as it is.

Mr. Child. After the remarks of Mr. Randolph, I shall go for the amendment, and vote to retain the whole power in the joint meeting, or I see we shall have none.

Mr. Zabriskie. I regret to hear the gentleman make this announcement. I am opposed to the joint meeting, but am desirous of producing a state of harmony and unanimity, and therefore I felt called on to yield something by way of compromise and conciliation. It was my intention, and I know it was the intention of several gentlemen who vote with me, to give the officers enumerated in the next section, (Judges of Common Pleas) to the joint meeting. I am willing to yield these 95 Judges to the people. It is doubtless proper that the highest appointments should be vested in the Governor, but these county officers, in which the people have a local interest, I am willing to give to them; and if the gentleman will not accept this, I shall go against the whole. There prevails, as far as my experience goes, general dissatisfaction at joint meeting appointments.—What motive can induce gentlemen to submit this question but dissatisfaction with the appointment power, or a desire to keep the Legislature, Executive, and Judicial departments distinct? It must be either one of these motives or none at all. Do gentlemen when they say they have seen no corruption in joint meeting, mean to assail the integrity of the witnesses who have seen and testified? It is the positive testimony which carries weight in court, and not what a person has not seen. I am willing to compromise to a certain extent, but I am not willing to give all the highest appointments to the joint meeting. The gentleman says he will not compromise on principles, but let me point him to high and glorious examples in the framers of our Constitution.—Let him refer to their proceedings,

and he will find that they compromised principles for the general good.

Mr. Parker reminded Mr. Zabriskie that the framers of the Constitution represented states, and the compromise there was of a separate state. He declared his attachment to the old Constitution, and especially to this feature of the joint meeting, which he should vote to retain.

Mr. Naar opposed the amendment, and declared his intention of making no compromise in matters of principle. It is nothing else, he said, but log rolling—you give me your vote, and I will give you mine. He was unwilling to give the Judges of the Common Pleas to the joint meeting, any more than Judges of the Supreme Court. The only difference between them was, that one receives a small salary by way of fees, and the other a large one, paid quarterly.

Mr. R. P. Thompson briefly advocated the section as reported, and differed from his colleague, Mr. Gattell as to his ideas of public sentiment. He thought the people were decidedly in favor of the mode proposed by the Committee, and opposed to the joint meeting.

Mr. Sickler called the previous question, but it was not seconded.

Mr. Marsh was for the amendment on principle. He did not regard the system as at war with the best interests of the state. It was in operation elsewhere with entire success and satisfaction, and in denouncing it here you denounce it in those states where it is established. He feared that the opposition to this mode of appointment might arise from disappointment, or because their feelings had been shocked by some of the appointments which had been made. But here they were contending for a principle, and he insisted that the appointments to important offices should be with the people, and they have a right to say that their representatives who knew their wishes and sentiments, should come here and express them. It would be anti-democratic to take this power from the people; and he cited the several states, where the appointing power is vested in the immediate representatives of the people. He asserted that a great deal of unanimity prevailed in Morris County against the disposition to make this change. The people were afraid of it and of the evils which it would entail on them; and he had, he thought, good reason to suppose that the people never would vote for the Constitution with this feature in it.

Mr. Green replied to Mr. Field's remarks at some length, and in a most impassioned manner. He insisted that the independence of the Judges would be preserved by appointing them in joint meeting, and destroyed by giving the appointment to the Governor; and he closed a most eloquent appeal, after alluding to the Judges in Pennsylvania,

who he said were in danger of becoming tools of Executive power, by exhorting the members to vote for the amendment, and preserve the purity and independence of the Judiciary.

Mr. Williamson. I was apprehensive that I should not have been present here and record my vote against this amendment. I have no hesitation in saying, even if I do not have the opportunity to record my vote, that this is a most vital principle, so much so that if the amendment prevails, I shall think the Constitution worthless. It will lose all value in my estimation. If there is any one thing the people desire to see corrected it is the appointing power. If any one thing has been corrupted—if any one thing abused under the Constitution, it is the appointing power. Why, then, persevere in retaining a power so abused—so liable to abuse? If you have a responsible Governor, give him the power, which belongs naturally to his office. Strip him of the power and it is merely nominal—an officer without respect—without regard. Take that from him and what do you have? As for the veto power which you have given him, that amounts to nothing. Take this from him and the duties of Governor may be performed by any child. Take the present Constitution and where are his powers? They are merely nominal. It would require no talent, no industry, no ability to fill the office. It would be merely nominal. It is nothing but a high sounding title without power, and to strip him of this power, which naturally belongs to him—which naturally adheres to the office, and of what consequence would it be whether we had a Governor or not? I would be willing to be without a Governor and to have all the honors of the office vested in the President of the Senate.

[G]Mr. Ryerson moved the previous question, and it was seconded.

[J]And on the question, shall the main question be now put?

It was determined in the affirmative.

The question then being on agreeing to the amendment, the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brown, Cattell, Child, Condit, Dickerson, Elmer, Ewing, Gilchrist, Green, Hornblower, Marsh, Parker, Randolph, Stites, Swain, Ten Eyck, Westervelt, Wills, Wood—21.

Nays. Mr. Brick, Cassedy, Clark, Connolly, Edsall, Field, Fort, Haight, Halsted, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Ryerson, Schenck, Sickler, Spencer, Stratton, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Williamson (pr.), Wurts (v.p.), Zabriskie—34.

The section, as amended, was then adopted.

On motion of Mr. Parsons,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

On motion of Mr. Connolly, it was

Resolved, That a committee of three be appointed to examine and report the amount of incidental and other expenses incurred by this convention.

Messrs. Connolly, Halsted, and Ewing were appointed said committee.

The convention then proceeded to the consideration of the unfinished business of the morning, being the report of the Committee on the Appointing Power and Tenure of Office, as amended in committee of the whole.

The second article being still under consideration,

[G]Mr. Green asked a reconsideration of the vote on the section relating to the tenure of office of the judges of the Supreme Court and of the Chancellor. [A]He was not aware this morning that the question was to be taken upon the whole section and had one or two amendments to offer, which he had then prepared. [G]He wished to move to amend the section so as to provide that those officers should hold their offices for life [A]during good behavior [G]or until removed by a concurrent vote of two thirds [A]of all the members [G]of both Houses of the Senate and Assembly, but in all removals the cause thereof should be entered on the journals.

If that should fail Mr. G. should move to extend their term of office to ten years. [A]He stated that it was at the request of Mr. Ryerson that he explained the object of the amendment. He had no wish to discuss the questions but only to record his vote upon them.

Mr. Naar asked if it applied to the present officials?

Mr. Green. Not at all, sir.

[G]Messrs. G. H. Brown, Condit and Clark urged the reconsideration; and the section was reconsidered [A]on motion of Mr. Pickel.

[J]Mr. Green moved to amend the first section, by striking out for the term of "seven years" and inserting "during good behavior, or until removed in the manner hereinafter prescribed";

And the yeas and nays being demanded,

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Allen, Bell, Brown, Clark, Field, Green, Halsted, Hornblower, Parker, Spencer, Stratton, Ten Eyck—12.

Nays. Mr. Brick, Cassedy, Condit, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Gilchrist, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Randolph, Ryerson, Sickler, Stites, Swain, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Wills, Wood, Wurts (v.p.), Zabriskie—39.

Mr. Green moved further to amend the same section, by striking out "seven" before the word "years", and inserting "ten";

And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Allen, Bell, Brick, Brown, Clark, Elmer, Green, Halsted, R. S. Kennedy, Parker, Sickler, Spencer, Stratton, Swain, Ten Eyck, Wood—16.

Nays. Mr. Cassedy, Cattell, Condit, Connolly, Dickerson, Edsall, Ewing, Field, Fort, Gilchrist, Haight, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, Laird, Lambert, Marsh, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Stites, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Wills, Wurts (v.p.), Zabriskie—37.

Mr. Jaques moved to amend so as to reduce the term of the same section, by striking out "seven", before the word "years", and inserting "five";

And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Jaques, Naar—2.

Nays. Mr. Allen, Bell, Brick, Brown, Cassedy, Cattell, Clark, Condit, Connolly, Dickerson, Edsall, Elmer, Ewing, Field, Fort, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Mickle, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stites, Stratton, Swain, Ten Eyck, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Wills, Wood, Wurts (v.p.), Zabriskie—51.

[G]Mr. Hornblower asked for the yeas and nays on the whole section. [Mr.] Field . . . opposed the call on account of the absence of members.

[A]Mr. Ogden said he should not be willing to accommodate gentlemen again if they should ask a re-consideration for one purpose, and then spring a trap and accomplish some other purpose.

Mr. Brown wanted the ayes and noes called for the same reason that he wanted the re-consideration, that he might record his vote against the tenure of office as reported, as he had this morning, only against the mode of appointment.

Mr. Hornblower could not understand what his young friend meant by springing a trap.

No honest man will be afraid to record his vote upon this or any other question.

Mr. Ogden did not understand what was meant by that. He did not object to recording his vote; he only objected to calling the ayes and noes on a question which has already been decided, when the house is not full. He was always ready to vote; and thought it to be an evidence of honesty that he would always be found on the same side. He had voted upon this question this morning, and was prepared to do so again if the motion was in order.

Mr. Parker said he was against the section, but he should vote for it now because it has already been decided and, he felt bound to submit to the majority.

Mr. Condit did not wish to spring a trap, but he wanted the ayes and noes called upon agreeing to the section, as they were not called this morning.—The previous question was then called too soon, as no one had an opportunity to answer the remarks of the President, as he should have been glad to have done.

Mr. Gilchrist was opposed to calling the ayes and noes and felt bound in honor under the circumstances, to vote for the section although he had voted against it in the morning, as it was fairly decided then.

[Mr.] [C]Cattell advocated it; and

[J]The question then being on agreeing to the section, the yeas and nays were demanded, and

It was determined in the affirmative, as follows, *viz:*

Yeas. Mr. Brick, Cassedy, Clark, Connolly, Edsall, Field, Fort, Haight, Halsted, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stratton, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Wurts (v.p.), Zabriskie—36.

Nays. Mr. Brown, Cattell, Condit, Dickerson, Elmer, Ewing, Green, Hornblower, Marsh, Stites, Swain, Ten Eyck, Westervelt, Wood—14.

[A]Mr. Green wished to say, that he had no intention of this kind,

when he asked for the re-consideration; and had immediately stated to those around him, that if there was danger that the section would be disagreed to, he should have felt it his duty to move a call of the House, and have the friends of the section sent for.

Mr. Hornblower made a similar explanation—When he had asked for the ayes and noes, he did not know but every member was in his seat.

[J]The second section being under consideration,

Mr. Brick moved to amend, by striking out all after the words "common pleas", to the end of the section, and inserting "shall be appointed by the Senate and General Assembly in joint-meeting, and be commissioned by the governor".

[A]Mr. Green said the gentleman had voted against these joint meeting appointments this morning, and he should like to have a reason for the change.

Mr. Brick said he did it as a matter of compromise.

Mr. Ogden. This subject has been fully discussed. We have had arguments for making the Governor and the Senate the appointing power and likewise the joint meeting. This morning there was a large *minority* in favor of the latter. We have been sent here to make a Constitution which may be acceptable to the people. No matter how secure we make it or how we guard it, if it is not adopted by the people, it will remain in the Secretary's office, as a memento of the fruitless labors of this Convention. I am willing that we shall make a compromise of all these conflicting views, and that the appointing power shall be distributed. We were told a few days since by the learned Chief Justice, that he had seen men, in violation of the sanctity of this House, take their seats upon the floor of joint meeting behind members, and tell them how to vote!—That astonished me, and yet this morning the same gentleman without giving any reasons voted to place the appointment of all our most important officers in that depository. That staggered me. I am willing therefore so to distribute the appointing power as to lodge a part of it in each of the Departments, for which different eminent gentlemen have expressed a preference. We have determined to leave the election of Justices of the Peace, of Clerks and Surrogates, &c, with the people. We have placed in the hands of the Governor and Senate the higher Judicial and Executive officers, and to those officers which we have left in joint meeting, I am willing to add the Judges of the Court of Common Pleas. Experience will show which Department will be the safest depository of power.

Mr. Hornblower said he had been accused this afternoon not only

of endeavoring to spring a trap upon members, but also of being influenced by improper motives in his votes. Now I appeal to you sir, and to every member of this body, if I did not state when this subject was discussed in Committee of the Whole, that my mind was not made up, and that I should hold myself at liberty to change my vote in Convention if I thought proper. I appeal to gentlemen if they do not remember it—and yet I am charged by this young gentleman on my left, with voting without rhyme or reason. I say young, as compared with myself. I objected then to giving the very appointments to Joint meeting, which that gentleman now votes for. These scenes of corruption never occurred in the appointment of your Chancellor or Judges of the Supreme Court. For 40 years since I arrived at manhood I have never seen the power abused in making these great appointments —and yet the gentleman votes to take these very appointments away from Joint meeting and give to it others which have always been abused—Our learned President, who this morning contended that we should take these appointments away from Joint meeting, and thought that our labors would be almost fruitless and that he should be almost willing to take his hat and go home unless we did so, accepted the highest office in the State for 12 years from the Joint meeting—and we have a right to felicitate ourselves that he did so. He applied during that time to members, to take away the appointment of Surrogates from him, to the Joint meeting—and yet this morning he voted to take these appointments away from the same body; and my young and nimble friend opposite, called the previous question to prevent a reply. Now we are called upon to make a compromise—and gentlemen say "we will take all the great appointments and leave some of the smaller ones to Joint meeting."

Mr. Dickerson said if any compromise had been made, he washed his hands of it—he had no knowledge of it, and he only wondered how those who had talked so of the Joint meeting, could vote to give them even this power. But as he had great confidence in the Joint meeting he should vote for it, and as one of the people, would be thankful for the smallest favors.

Mr. Randolph argued that while the great appointments which are made singly, might be given to Joint meeting with comparative safety, the very worst ones which could be placed there, were these that come in clusters, and which give opportunity for log-rolling and management.

Mr. Condit said his colleague (Mr. Hornblower) was correct in his statement of what he had said in the Committee of the Whole. He

remembered it distinctly.

Mr. Ogden conceded that he had argued upon the corruptions and abuses of Joint meeting and said he should still vote to place the appointing vote there if he thought proper.

Mr. Green wished to say a word in reply to the gentleman from Passaic. This morning it was solemnly decided by the Convention, and I cheerfully yield to it, that the appointing power should be taken away from the Joint meeting—*first* on account of the corrupt influences in making the appointments, and *secondly* for its reflex influence on legislation. Now a compromise is proposed. One of the strongest objections that has been made to the Joint meeting appointments, has been their great number—and the gentleman this morning refused to give then *one* appointment, but now is willing to give them *a hundred!* If the Joint meeting is a corrupt body, and not fit to appoint your Chancellor and Judges, *a fortiori* it is not fit to make these either. And of a similar nature was his argument that the appointment of the few officers proposed this morning to be given to the Joint meeting, would have a bad influence upon legislation—but these hundred will not! The idea of this compromise is a strange one. The gentleman says that there is an honest difference of opinion upon the subject, and he is willing to try all the methods proposed, in the hope of catching the best somewhere—to try three different plans & see which is right! And this although we are sworn to perform our duties according to the best of our ability and judgment. I cannot see how he can declare that the one is the proper tribunal for the appointment of our great officers, but not for these.

I however cheerfully bow to the decision of the majority, but hope that the appointments will be kept together, although I am in favor of the Joint meeting generally.

Mr. Gilchrist said if any compromise had been made he was ignorant of it.

Mr. Allen was opposed upon principle to giving the Governor the appointing power; and could not see how it naturally belonged to the Executive power, as the President had said. He contended that it was like the veto, a remnant of Kingly power, and does not belong to republicanism at all; and he was as much opposed to giving him the appointing as the veto power. They are both prerogatives which belong to Kings.

And on this question the yeas and nays were demanded, and being called

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brick, Cassedy, Cattell, Child, Condit, Dickerson, Edsall, Ewing, Fort, Haight, Hibbler, Holmes, P. B. Kennedy, Laird, Lambert, Marsh, Mickle, Neighbour, Ogden, Parsons, Pickel, Pitney, Ryerson, Stites, Swain, Ten Eyck, J. R. Thomson, Vanarsdale, Westervelt, Wills, Wurts (v.p.)—33.

Nays. Mr. Brown, Clark, Connolly, Elmer, Field, Gilchrist, Halsted, Jaques, R. S. Kennedy, Naar, Parker, Randolph, Schenck, Stratton, R. P. Thompson, Vroom, Wood, Zabriskie—18.

The same section being still under consideration,

Mr. Connolly moved to amend, by striking out the whole section, and inserting the following:

"Judges of the courts of common pleas shall be elected by the people of their respective counties, at the annual elections for members of the General Assembly of this state".

[G]Mr. Jaques advocated the motion and asked for the yeas and nays, and

[J]It was determined in the negative, as follows, *viz:*

Yeas. Mr. Cassedy, Connolly, Edsall, Fort, Jaques, P. B. Kennedy, Marsh, Naar, Pickel, Sickler—10.

Nays. Mr. Allen, Bell, Brick, Brown, Cattell, Child, Clark, Condit, Dickerson, Elmer, Ewing, Field, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Hornblower, R. S. Kennedy, Laird, Lambert, Mickle, Neighbour, Ogden, Parker, Parsons, Pitney, Randolph, Ryerson, Schenck, Spencer, Stites, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Wills, Wood, Wurts (v.p.), Zabriskie—45.

The same section being still under consideration,

Mr. Allen moved to amend, by inserting after "common pleas" the words "and prosecutors of the pleas";

Which was disagreed to.

The section, as amended, was then adopted.

The third section being under consideration,

[G]Mr. Stratton moved to strike out the clause by which the appointment of Inspectors of the Prison was given to the joint meeting. [A]He said they should be appointed by a different power from that which appoints the keeper because they have a supervision over him.

[J]Which was disagreed to, [A]19 to 24.

[J]The section was then adopted, without amendment.

The fourth section being under consideration, the amendment made in committee of the whole to the same, by prefixing the word "the", was agreed to.

The question being on agreeing to the amendment made in committee of the whole to the same section, to strike out "prosecutors of the pleas",

[A]Mr. Brown inquired if the Prosecutors were to hold their office at the will of the Attorney General?

Mr. Vroom answered that such was the intention.

[G]Mr. G. H. Brown opposed the amendment . . . as proposing the very worst possible mode of appointment.

Mr. Vroom advocated the amendment, and Mr. Halsted opposed it.

[J]The yeas and nays were demanded, and, being called,

It was determined in the negative, as follows, *viz:*

Yeas. Mr. Clark, Fort, Hornblower, P. B. Kennedy, Naar, Ogden, Vroom—7.

Nays. Mr. Allen, Bell, Brick, Brown, Cassedy, Cattell, Child, Connolly, Condit, Dickerson, Edsall, Elmer, Ewing, Gilchrist, Haight, Halsted, Hibbler, Holmes, Jaques, R. S. Kennedy, Laird, Lambert, Marsh, Neighbour, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Westervelt, Wills, Wood, Wurts (v.p.); Zabriskie—44.

The fourth section being still under consideration,

[G]Mr. Dickerson moved to amend so as to give the appointment of the Attorney General, Prosecutors, Clerks of Chancery and the Supreme Court and Secretary of State, to the joint meeting, instead of the Governor. [A]He hoped that as some few appointments had been given to joint meeting, these would be also.

Mr. Parsons was opposed to the amendment. He said a certain number of officers had been given to the people, and others to the Governor, and others to the joint meeting, as a sort of compromise, that is a compromise which he had proposed to himself.

Mr. Halsted was glad to hear that no other person was a party to that compromise, but the gentleman himself.

Mr. Green hoped the gentleman would cipher it out, and tell us exactly how many officers each of the departments was to have.

Mr. Sickler objected to putting such hard questions.

[G]Mr. Vroom moved to amend the amendment so as to strike out the Attorney General, Clerks of Chancery and Supreme Court and Secretary of State. (Out of order).

[J]And on this question the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Brown, Cattell, Child, Condit, Dickerson, Elmer, Ewing, Fort, Haight, Hibbler, Marsh, Parker, Swain, Ten Eyck, Westervelt, Wills, Wood—18.

Nays. Mr. Bell, Brick, Cassedy, Clark, Connolly, Edsall, Gilchrist, Halsted, Holmes, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stratton, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Wurts (v.p.), Zabriskie—34.

Mr. Naar moved to amend the same section, by striking out "secretary of state," [G]from the list of officers appointed by the Governor and Senate; and gave notice that if this motion succeeded he should propose an article for electing the Secretary with the Governor, for three years.

[A]Mr. Ryerson had thought of that, but there is a difficulty. The term of the present Secretary does not expire in a year, so that he cannot be elected with the Governor.

Mr. Naar said we could provide in the schedule that the first one shall hold his office only for 2 years from next fall, and be elected this [year].

[J]Which was not agreed to.

The section, as amended, was then adopted.

Mr. Wood offered the following, to be inserted as an independent section:

"To guard the people against the inconvenience which may arise from vacancies not filled by reason of the non-concurrence of the Senate in the nomination of the governor, in case any vacancy shall not be filled by the governor and Senate within ten days after the first nomination shall have been made, such office shall be forthwith filled by the Senate and General Assembly in joint-meeting."

[A]Mr. Zabriskie said the effect would be that the Senate would refuse to confirm for that purpose.

Mr. Green thought it was necessary to provide some way to guard against similar difficulties which had occurred in other States, where important offices had gone a long time without being filled.

[J]And the yeas and nays being demanded,

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Brown, Cattell, Clark, Condit, Dickerson, Ewing, Gilchrist, Green, Hornblower, Marsh, Stites, Ten Eyck, Westervelt, Wood—15.

Nays. Mr. Bell, Brick, Cassedy, Child, Connolly, Edsall, Elmer,

Fort, Haight, Halsted, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stratton, Swain, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Wills, Wurts (v.p.), Zabriskie—39.

The fifth section being under consideration, the amendment made in committee of the whole, by striking out the same, was agreed to.

The sixth section being under consideration,

Mr. Stratton moved to amend the same, by inserting after the word "chancellor" the words "and surrogates of the counties by the surrogate general"; [so that] [A]surrogates shall be appointed by the Surrogate General (the Chancellor.)

Mr. Condit said it was formerly so, and it was a subject of great importance.

Mr. Stratton thought there was no other way of improving the Orphans' Court so effectually as this.

Mr. Lambert was opposed to it, he thought they should be elected by the people.

Mr. Naar concurred, and said that 99 out of 100 of the people of his own county (Essex) were in favor of having them elected by the people.

Mr. Condit did not believe such was the wish of our people. The Surrogate is the only effective officer of the Orphans' Court. My colleague may know the wishes of the people of our county better than I do, though I was born and have always lived there. I will not say positively he is not right, but I will say that I question it very much. He advocated the amendment, and said he had as much respect for the people as others, although he did not have it so much on his lips, but it was felt in his heart; but he thought the election of Surrogates should be elsewhere than with the people. He should prefer the joint meeting.

Mr. Hornblower would not say that the assertion of his colleague (Mr. Naar) was not correct, but it was the first time he had heard an expression of sentiment from Essex County that any great portion of the people desired the election of Surrogates. He should prefer joint meeting, or the present amendment.

Mr. Brown said that no gentleman could know the opinion of his own County even, upon this subject. They are entitled to our own best judgment, and I believe, without pretending to know, that the people of N. Jersey do not want to elect any Judicial officer: and it is a sound principle, which cannot be overturned by argument, that no Judicial

officer should depend on a popular election.

Mr. Naar said he had talked with great numbers of the people of his county since he had been elected to a seat here, and 90 out of 100, at least, have said "Do for Heaven's sake go for giving the Governor to the people, and the Clerks and Surrogates to the people."

Mr. Vroom thought their appointment had much better be left with the Surrogate General. He held that it was hardly proper that a Judicial officer *quasi* should be elected by the people. He did go for Justices of the Peace, but could go no further. He looked at the Surrogate as in effect a Judicial officer, as the great guardian of the property of the county. So at least he ought to be, and he thought the appointment would be much better with the Surrogate General than the people.

Mr. Zabriskie said that the Surrogate was not a judicial officer. He was opposed to leaving this appointment to the Surrogate General, because he being a lawyer, they would be lawyers likewise; and the whole force of the argument was that they *should* be lawyers.

Mr. Brown said it was not so. He had not the remotest intention of that kind. He held that the choice of Surrogate belonged to another class of men, and that no one, whether a lawyer or not, could properly perform the duties when first appointed without experience. And he said that the last Surrogate of Somerset, a physician, understood more of the laws, and decisions, and peculiar duties pertaining to the Surrogacy, than any practising lawyer resident in the county of Somerset.

Mr. Hornblower read from the statute to show that the Surrogate had judicial powers, and that the very same statute gave an appeal from his decision, and whoever heard of an appeal from a ministerial officer? He had himself known of a case involving property [to] the amount of $5,000, appealed from the decision of the Surrogate to the ordinary General.

[J]And on this amendment the yeas and nays were demanded, and

[A]The vote being taken,

Mr. Cattell asked to be excused from voting, as he was not in favor of the mode of appointment as reported, nor of the amendment. His request was not granted.

Mr. Green asked to be excused likewise. He said his opinions were very well known to the Convention, but he submitted to the will of the majority, and was perfectly willing they should carry out their views by compromise or otherwise.

Mr. R. P. Thompson thought his colleague would have great reason to find fault, as the House had refused to excuse him, and he had

voted.

Mr. Cattell said he had voted, but with very peculiar feelings; and he thought that when a gentleman appealed to the courtesy of the House to excuse him, because he was not in favor of either side of the question, it was very strange at least that they should refuse it. He hoped the request of the gentleman from Mercer would be granted.

It was *not* granted.

Mr. Green. I suppose the House will allow me then to give my reasons for my vote. I had not intended to vote or to say one word more.

Several persons objecting,

Mr. Green. What! Compel a gentleman to vote without giving his reasons?

Objections still being made and the chair deciding that it would be out of order unless by consent,

[Stratton's amendment] [J]was decided in the negative, as follows, *viz*:

Yeas. Mr. Brown, Clark, Condit, Halsted, Hornblower, R. S. Kennedy, Parker, Parsons, Randolph, Schenck, Spencer, Stratton, Stites, Ten Eyck, Vanarsdale, Vroom, Westervelt—17.

Nays. Mr. Allen, Bell, Brick, Cassedy, Cattell, Child, Connolly, Dickerson, Edsall, Ewing, Fort, Gilchrist, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Marsh, Mickle, Naar, Neighbour, Ogden, Pickel, Pitney, Ryerson, Sickler, Swain, J. R. Thomson, R. P. Thompson, Wills, Wood, Wurts (v.p.), Zabriskie—36.

The sixth section was then adopted, without amendment.

The seventh section being under consideration,

Mr. Cattell moved to amend the same, by striking out the words "and surrogates" [G]from [this] section providing for their election by the people. It was his wish to give the appointment of these officers to the joint meeting.

[A]Mr. Green said he supposed he would be allowed now to give his reasons for his vote—and he proceeded to do so earnestly and eloquently. He contended that a Surrogate, if elected by the people, was unfit to decide between an executor or administrator who was a politician, and could control a hundred votes, who was claiming a certain commission on the one side, which the Surrogate considered too high, and orphan or minor children on the other—that human nature was always the same, and that there was always danger, with power upon the one side and weakness on the other.

[G]Mr. Naar opposed the motion.

[J]And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Cattell, Clark, Condit, Gilchrist, Green, Hornblower, R. S. Kennedy, Marsh, Parker, Schenck, Stites, Ten Eyck, Vanarsdale, Vroom, Westervelt, Wood—16.

Nays. Mr. Allen, Bell, Brick, Cassedy, Child, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Haight, Halsted, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Randolph, Ryerson, Sickler, Spencer, Stratton, Swain, J. R. Thomson, R. P. Thompson, Wills, Wurts (v.p.), Zabriskie—37.

The section was then agreed to, without amendment.

The eighth section being under consideration,

Mr. Pitney moved to amend the same, by inserting after the word "state" the words "sheriffs shall hold no other office during the time for which they are elected";

Which was disagreed to. [The newspapers incorrectly reported that it was agreed to.]

The section was then adopted, without amendment.

The ninth section being under consideration, the amendment made in committee of the whole, by striking out the same, was agreed to.

The tenth section being under consideration, the amendments made, in committee of the whole, to strike out of the first paragraph the words "of the several wards in the city of Newark", and inserting "of the wards in cities that may vote in wards, in such manner and under such regulations as may be hereafter provided by law"; and also, in the fourth paragraph, to strike out "several wards in the city of Newark", and insert "wards in cities that may vote in wards", were severally agreed to.

The amendment made, in committee of the whole, to the same section, by striking out the words following, *vis:*

"In all elections of justices of the peace, if no more than two are to be elected in the township or ward, no elector shall vote for more than one person; if no more than four are to be elected, no elector shall vote for more than two; and if five are to be elected, no elector shall vote for more than three";

Being under consideration,

[A]Mr. Clark hoped the report of the Committee, which struck out the clause which allowed each person to vote for only a majority of Justices, would not be agreed to. He considered it a most admirable

feature.

Mr. R. P. Thompson concurred. He thought it would prevent a mere party magistracy, and would be like pouring oil upon the waters.

Mr. Mickle advocated the striking out.

[J]And the question being on agreeing to [striking out] the same, the yeas and nays were demanded, and

It was decided in the affirmative, as follows, *vis:*

Yeas. Mr. Brick, Cassedy, Condit, Connolly, Dickerson, Elmer, Ewing, Fort, Gilchrist, Green, Halsted, Hibbler, Holmes, Hornblower, P. B. Kennedy, Laird, Lambert, Mickle, Ogden, Pickel, Pitney, Stratton, Stites, Swain, J. R. Thomson, Vanarsdale, Vroom, Wood, Wurts (v.p.)—29.

Nays. Mr. Allen, Bell, Cattell, Child, Clark, Edsall, Haight, Jaques, R. S. Kennedy, Marsh, Naar, Neighbour, Parker, Parsons, Randolph, Ryerson, Schenck, Sickler, Spencer, Ten Eyck, R. P. Thompson, Westervelt, Wills, Zabriskie—24.

The same section being still under consideration,

Mr. Child moved to amend the same, by striking out, in the third paragraph, the words "except when elected to fill vacancies, he shall hold for the unexpired term only";

Which was disagreed to.

Mr. Ten Eyck moved to amend the same section, by striking out, in the first paragraph, after "elected" to the end of the paragraph, and inserting "shall be appointed by the Senate and General Assembly in joint-meeting."

[A]He did it from a sense of duty. He had the honor to make a similar motion with regard to the Judges of the Common Pleas: and as that had been at first refused and a change had afterward come over gentlemen, he hoped it would extend as far as this.

[J]And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Allen, Condit, Green, Halsted, Hornblower, Marsh, Schenck, Spencer, Stites, Ten Eyck, Vanarsdale, Westervelt, Wood—13.

Nays. Mr. Bell, Brick, Cassedy, Cattell, Child, Clark, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Gilchrist, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Sickler, Stratton, Swain, J. R. Thomson, R. P. Thompson, Vroom, Wills, Wurts (v.p.), Zabriskie—40.

The section, as amended, was then adopted.

The eleventh section being under consideration, the amendment made, in committee of the whole, to the same, was agreed to, and the section, as amended, was adopted.

On motion of Mr. Randolph,

The twelfth section, as amended in committee of the whole, was ordered to be stricken out. [A]He said that it was provided for in the Constitution of the United States, and if the Senate, as they may do, should hereafter decide that they shall be elected by the two houses separately, our Constitution would have to be altered, for this requires them to be elected by joint meeting.

[J]On motion of Mr. Ryerson, it was

Ordered, That the report of the committee on the Appointing Power and Tenure of Office, as amended, be referred to the committee to arrange and unite the several reports.

[A]Mr. Ryerson moved to adjourn to 8 o'clock to-morrow morning, and a scene of *Congressional disorder* ensued.

[J]On motion of Mr. Stratton,

The convention adjourned till to-morrow morning, at nine o'clock.

[J]FRIDAY MORNING, 21st June.

At nine o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Reed.

On motion of Mr. Ewing,

The convention proceeded to the consideration of the report of the Committee on the Legislative Department, with the amendments made to the same in committee of the whole.

The first section being under consideration,

Mr. Randolph moved to amend the same, by striking out "department" and inserting "power";

Which was agreed to, and the section, as amended, was adopted.

The second section being under consideration,

The amendment made in committee of the whole, by striking out the words "and each senator shall have one vote", was agreed to.

[G]Mr. Jaques moved to strike out three years as the term of Senators. [A]He wanted to insert the word annually, and he insisted that the people would be better satisfied with this. They would view the election for three years with suspicion and jealousy. He moved to strike out first in order to test the sense of the Convention.

Mr. Dickerson hoped the motion would prevail, as he saw no good reason for the change at all. There was no necessity of making the term of one house different from the other. He was not in favor of giving more importance to one branch of the Legislature than to the other.

Mr. Ten Eyck said he would vote against the section, inasmuch as the appointing power was now vested in the Senate. He had voted for this section in the Com. of the Whole, but as the appointing power had not been changed to the joint meeting as he had hoped, he should now vote against it.

Mr. Pickel was in favor of the amendment, and insisted that if the popular voice could be heard, it would be decidedly in favor of annual elections.

Mr. Vroom thought it was strange that there should now be this difficulty; who are the Justices of the Supreme Court; the Governor, the Justices of the Common Pleas, and why not as well have them elected annually. The object of this section was to acquire some stability in the Legislative power, and it would be incorrect in principle and theory to have no check on this power.

Mr. Ewing was in favor of having the Representatives responsible to the people at short intervals. If these Senators should perform their duty as to appointments unfaithfully and they should remain in office in spite of the people, it would bring about a state of feeling and discontent never before witnessed. It was a different case with the Judiciary.—They ought to have a longer tenure of office, to render them free and independent of any local contingencies. This was a feature drawn from aristocratic times, one which the people he was sure were not prepared to approve. If these great powers of appointment had not been assigned to them, we might have felt different, but as it was, he hoped the amendment would prevail.

Mr. Parker said it was a wrong idea that the people would only elect their Senators every three years. It was not so, but one-third of the Senate was to be elected annually, and the people could at all times correct any abuse, by changing the third of the Senate, as it was not likely they would be unanimous on any one subject. It was very desirable to have stability in the legislation and this plan of

modelling the Senate would have it.

[J]And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Cassedy, Dickerson, Edsall, Ewing, Fort, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Marsh, Naar, Neighbour, Pickel, Pitney, Swain, Ten Eyck, Vanarsdale, Westervelt, Wills, Wood—22.

Nays. Mr. Bell, Brown, Child, Clark, Condit, Connolly, Elmer, Field, Gilchrist, Green, Haight, Halsted, Hornblower, R. S. Kennedy, Mickle, Ogden, Parker, Parsons, Randolph, Ryerson, Schenck, Sickler, Stratton, Stites, J. R. Thomson, R. P. Thompson, Vroom, Williamson (pr.), Wurts (v.p.), Zabriskie—30.

The same section being still under consideration,

Mr. Connolly moved to amend, by striking out the same, and inserting the following, as a substitute:

"II. The Senate shall consist of fifteen members, and shall never exceed twenty-one.

The state shall be divided into five districts, each of which shall contain, as nearly as may be, an equal number of inhabitants, to be composed of entire and adjacent counties, and be entitled to three senators, who shall be chosen for three years, at the same time and in the same manner as the members of the General Assembly are required to be chosen. At the first session of the legislature under this constitution, they shall be divided by lot from their respective districts, as nearly as may be, into three respective classes: the seats of the senators 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 shall annually be chosen for ever thereafter.

The present congressional districts, as now established by law, shall be the senatorial districts of this state until after the next census of the United States, and until the legislature shall alter the same; which they may do after every United States census shall be taken."

[A]Mr. Condit was glad to see this proposition brought forward, as he considered this the only true basis of representation, and the only one which could stand the test of time.

[J]And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Bell, Condit, Connolly, Fort, Haight, Holmes, Hornblower, Jaques, P. B. Kennedy, Laird, Naar, Pickel, Stites, Williamson (pr.), Wills—15.

Nays. Mr. Brown, Cassedy, Child, Clark, Dickerson, Edsall, Elmer, Ewing, Field, Gilchrist, Green, Halsted, Hibbler, R. S. Kennedy, Lambert, Marsh, Mickle, Neighbour, Ogden, Parker, Parsons, Pitney, Randolph, Ryerson, Schenck, Sickler, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Wood, Wurts (v.p.), Zabriskie—37.

The second section being still under consideration,

Mr. Condit moved to amend, by inserting after "state" the words "except the county of Essex, which, on account of its population, shall be entitled to two." [A]Mr. C. thought the construction of the Senate now too unequal, as one county with a population of 5,000 had the same representation in that body as one with 45,000 population.

[J]And on this amendment the yeas and nays were demanded, and

It was determined in the negative, as follows, *vis:*

Yeas. Mr. Bell, Condit, Hornblower, Naar—4.

Nays. Mr. Brown, Cassedy, Child, Clark, Connolly, Dickerson, Edsall, Elmer, Ewing, Field, Fort, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Mickle, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Stites, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Williamson (pr.), Wills, Wood, Wurts (v.p.), Zabriskie—38.

The same section being still under consideration,

Mr. Mickle moved to amend the same by striking out "three", before the word "years" and inserting "two";

And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Cassedy, Connolly, Dickerson, Ewing, Fort, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Marsh, Mickle, Naar, Neighbour, Pickel, Pitney, Swain, Ten Eyck, R. P. Thompson, Vanarsdale, Wills, Wood—24.

Nays. Mr. Bell, Brown, Child, Clark, Condit, Edsall, Elmer, Field, Gilchrist, Green, Halsted, Hornblower, R. S. Kennedy, Ogden, Parker, Parsons, Randolph, Ryerson, Schenck, Sickler, Stites, Stratton, J. R. Thomson, Vroom, Westervelt, Williamson (pr.), Wurts (v.p.), Zabriskie—28.

[G]Mr. Pickel moved to strike out three years and insert annually. Not agreed to, 18 to 34.

Mr. Sickler rose to remind the house of the great mistake they had made, in not passing his resolution to postpone all fancy amend-

ments to the 4th of July.

[J]The section, as amended, was then adopted.

The third section being under consideration, the same was agreed to, without amendment.

The fourth section being under consideration,

The amendments made to the same, in committee of the whole, were agreed to, and the section, as amended, was adopted.

[The fifth to the tenth sections inclusive were successively agreed to, without amendment.]

The eleventh section being under consideration,

Mr. Parker moved to amend, by striking out the following words: "for the period of forty days from commencement of the session; and shall not exceed the sum of one dollar and fifty cents per day for the remainder of the said session";

And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Brown, Browning, Clark, Condit, Field, Gilchrist, Halsted, Hibbler, Hornblower, Marsh, Mickle, Parker, Randolph, Schenck, Stites, J. R. Thomson, Vanarsdale, Wood—18.

Nays. Mr. Allen, Bell, Cassedy, Child, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Green, Haight, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Ryerson, Sickler, Stokes, Stratton, Swain, Ten Eyck, R. P. Thompson, Vroom, Westervelt, Williamson (pr.), Wills, Wurts (v.p.), Zabriskie—37.

The eleventh section being still under consideration,

[A]Mr. Brown was in favor of shortening the session, but opposed this mode of doing it, and he was opposed to fixing the salary at all. He moved [J]to amend the same . . . so as to read as follows: "No session of the legislature shall exceed the period of forty days from the commencement of the session, unless when required or convened in extra-session by the governor."

[A]Mr. Zabriskie said that if the object intended could be obtained by this motion he would go for it, but evidently it could not. How easy would it be for the Legislature to go on for 40 days without having completed their business, and then the Governor would be compelled to convene an extra session, at which they could sit as long as they chose, and the State would be under the additional expense of mileage.

Mr. Brown said the gentleman's argument would only hold good in case members were taken from the state prison, or elected from among the basest of men. If an evil has existed in consequence of prolonged legislation, he denied that it was because the members could take money home with them. It was because new members did not set themselves to learn how business might be expedited.

Mr. Clark asked if this Convention were willing constitutionally to slander the Legislature of New Jersey. It was saying that they could not be trusted, and for one he would never put his name to a Constitution containing such a slander.

Mr. Vroom said he had put his name to the report unthinkingly, and he had intended no slander upon any one. There is a provision that no money shall be drawn from the Treasury without an appropriation, and whom did that slander? Would the gentleman strike that out? It was necessary to have a limit to their pay as they fixed it themselves, and no doubt if Judges of the Supreme Court fixed the amount of their own pay, that would be limited too, and there would be a constitutional limit. He admitted it was an imputation on the Legislature, that instead of attending to public business, they attended to their own affairs. Well it was true, and he doubted not that members around him if called on, would say with him that it was true.

Mr. Hornblower opposed the provision in the report, as uncalled for and undignified, and he hoped to have the privilege of recording his name against it.

Mr. Jaques reminded gentlemen that in other States the compensation was constitutionally fixed. He adverted to the action of Congress in raising their pay, and to the general complaints, that the sessions were prolonged for the sake of the pay, but yet no one had ventured to charge them with being corrupt. He was decidedly in favor of limiting the pay, and he thought $2 per day was enough. They voted that sum to this Convention, and he thought it abundantly large.

Mr. Dickerson was in favor of the section as reported.

Mr. R. S. Kennedy said the regular custom of the Legislature was, and had been, as was very well known to spend three hours a day for 4 days in the week, and he considered that the imputation on them was correct and well founded. This Convention had done more work since they had been in session, than any Legislature in three months. If they chose to fix the pay below $3 they were at perfect liberty to do it. They had the settlement of all other salaries, and it was no more than just, that their own pay should be fixed here.

Mr. Randolph said he was opposed to the whole section, and if this did not prevail, he should move to strike out the whole section, after the word "Law" in the second line. He was in favor of leaving

the Legislature to fix the pay, and if the people were displeased, they would turn them out, and with them the Law fixing their salary. As to the compensation to members of Congress, he considered it entirely inadequate, nor was he the only one who would say so. He had no doubt the Legislature had often sat longer than was required, but that grew out of the provision in the Constitution that the 1st session should be held in November, the busiest season in the year for farmers, and the consequence was that an extra session was called for. Here however the time of meeting had been changed from November to January, and as the spring approached, it would take more than $1.50 per day, or even the public business to keep the farmers here. It was an imputation on the free people of New Jersey to which he could not assent.

Mr. Zabriskie replied to Mr. Randolph, and contended that the people would be more satisfied with this section than any other single section in the Constitution, and he thought the Convention was called on as well on principle as from motives of duty of the people, to fix a limit to the salary.

Mr. Gilchrist expressed himself in favor of limiting the pay. He said:

As a member of the committee who made this report, I feel it is due to myself to state that in the committee, I was in favor of limiting the compensation to $3 per day, but opposed to reducing it to $1.50 after the expiration of 40 days, not because I thought it a slander, or an imputation on any one, but because I considered it unnecessary and undignified. The same reasons induced me to vote for striking out those words, but as the Convention have decided to retain them, I shall now vote for the section as amended in Committee of the Whole.

Mr. Child thought in another view it was paying a high compliment to the Legislature. It was saying we know you come here for the public good and to transact the public business with fidelity, or else the salary would be fixed much higher.

Mr. Vroom asked if Mr. Brown would not go further and limit the pay to $3, as well as to limit the session, but Mr. Brown did not accept the suggestion.

Mr. Allen objected to limiting the session, to forty days, as every law framed within 5 days of the close of the session would be at the absolute will of the Governor.

And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Brown, Browning, Clark, Condit, Hornblower, Mickle, Randolph, Schenck, Wood—9.

Nays. Mr. Allen, Bell, Cassedy, Child, Connolly, Dickerson, Edsall, Elmer, Ewing, Field, Fort, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Ryerson, Sickler, Stites, Stokes, Stratton, Swain, Ten Eyck, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Williamson (pr.), Wills, Wurts (v.p.), Zabriskie—44.

The eleventh section being still under consideration,

Mr. Randolph moved to amend, by striking out all after the words "treasury of the state";

Which was disagreed to.

The amendment made, in committee of the whole, to the same section, was then agreed to.

The question then recurring on agreeing to the section, as amended, the yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Cassedy, Child, Connolly, Dickerson, Edsall, Elmer, Ewing, Field, Fort, Gilchrist, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Ryerson, Sickler, Stites, Stokes, Stratton, Swain, Ten Eyck, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Williamson (pr.), Wills, Wurts (v.p.), Zabriskie—45.

Nays. Mr. Brown, Browning, Clark, Condit, Halsted, Hornblower, Randolph, Schenck, Wood—9.

The twelfth section being under consideration,

Mr. Parker moved to amend the same, by striking out the words "their respective houses", and inserting "the legislature";

Which was disagreed to.

The section was then adopted, without amendment.

The thirteenth section being under consideration,

And the question being on agreeing to the amendment made in committee of the whole, inserting, after "appointed"; the words "by the governor and Senate, or by the legislature."

Mr. Ewing moved to amend the amendment, by striking out "legislature" and inserting "joint meeting";

Which was agreed to.

The amendment made in committee of the whole, as amended, was then agreed to.

The same section being still under consideration,

[A]Mr. Ewing thought that the section did not go far enough, but that members of both Houses should be excluded from any appointments during their term and he moved [J]to amend the same, by striking out all after the word "state" to the end of the section.

[A]Mr. Ryerson and Mr. Child suggested that the most competent and the best men for offices which might become vacant might be in either House, and this amendment would preclude the Governor from selecting them, when they were, perhaps, the very best men for the station, and who had not any idea that any vacancy would exist, when they were elected.

Mr. Ewing again advocated the amendment, and urged that corruption or collusion which might arise on this subject, ought to be prevented.

Mr. Browning said the appointment of 95 Judges of the Common Pleas was vested in the joint meeting. The pay and time of the members was limited, and he asked if we precluded them from legislating their own pay would it not be prudent to preclude them from legislating themselves into office. He was decidedly in favor of the amendment, as without it, it might lead to corruption and collusion.

[J]And on this amendment the yeas and nays were demanded, and,

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Browning, Cassedy, Connolly, Dickerson, Elmer, Ewing, Hibbler, Laird, Naar, Stokes, Swain, Ten Eyck, Westervelt, Williamson (pr.), Wills—16.

Nays. Mr. Bell, Brown, Child, Clark, Condit, Edsall, Fort, Gilchrist, Green, Haight, Halsted, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Lambert, Marsh, Mickle, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Stites, Stratton, Vanarsdale, Vroom, Wood, Wurts (y.p.)—32.

Mr. Hornblower moved to reconsider the vote by which the amendment made in committee of the whole, as amended, was concurred in;

Which was agreed to.

Mr. Hornblower moved to amend, by inserting, before "joint-meeting", the words "legislature in";

Which was agreed to.

The amendment of the committee of the whole was then agreed to, and the section, as amended, adopted.

The fourteenth section being under consideration, the same was agreed to, without amendment.

The fifteenth section being under consideration, the amendments

made in committee of the whole were concurred in collectively.

Mr. Ryerson moved to amend the same, by striking out "No justice of the supreme court, nor judge of any other court, sheriff, justice of the peace, nor any" and insert the word "No";

Which was not agreed to.

Mr. Connolly moved to amend the same section, [G]disqualifying all officers of the United States for seats in the legislature, [J]by inserting, after the words "of this state", the words "postmasters excepted";

Which was disagreed to.

The section, as amended, was then adopted.

[The sixteenth, seventeenth and eighteenth sections were agreed to, without amendment.]

The nineteenth section being under consideration, [G]the clause requiring that all laws creating a state debt or liability exceeding $100,000, shall provide for an annual tax sufficient, with other appropriations made therein, exclusive of loans, to pay the debt in twenty years; [J]The amendment, made in committee of the whole, to insert, after the word "aggregate", the words "with any previous debts or liabilities", was concurred in.

[A]Mr. Gilchrist moved to strike out the words, "thirty-five years," inserted in Committee of the Whole, and insert, "a limited period to be specified in the law."

He said the Legislature, who when the period arrived 25 or 30 years hence, were to prepare the law, and the people who were then to decide by their votes, whether they would take the public works, or create a debt for any other purpose, would be better judges of the time which ought to be prescribed in the law for the payment of the debt, than this Convention can possibly be at this time. It may be then apparent, and I have no doubt that it will be so, that if a longer period than 35 years is fixed for the payment of the loan, it can be negotiated on much better terms.

I have no desire to see the State become the owners of these works, but I wish to make no constitutional provision that may prevent the people from placing themselves in the most advantageous position to negotiate.

Mr. Jaques hoped the amendment would not prevail nor the amendment adopted in the Committee of the Whole. It was opening a door for burthening the State with a debt which would encumber it from generation to generation. If the Legislature should be *managed* into a purchase of some of the public works, while the people were dream-

ing of golden harvests they would find themselves bankrupt and loaded down with debt. He remembered the time when the people were asked to loan the credit of the State to the extent of $10,000,000, to the Morris Canal Company. Every thing was very plausible. The State was to receive a revenue of $500,000, and there was to be no liability for the State, as the Morris Canal Bank was to be the security. What would have been the condition of the State if that loan had been made? It would have been saddled with a ten million debt. He was no prophet, but he predicted that if the State ever purchased any of these public works, it would be inevitably bankrupt.

Mr. Ryerson said we might as well abolish the section, as it would be giving a power to the Legislature to create a debt payable in 100 years, and the people would vote for that more readily than in the present limited time.

[J]And on [Gilchrist's] amendment the yeas and nays were demanded, and,

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Browning, Gilchrist, Halsted—3.

Nays. Mr. Allen, Bell, Brown, Cassedy, Child, Condit, Connolly, Dickerson, Edsall, Elmer, Field, Fort, Green, Haight, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Stites, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Williamson (pr.), Wills, Wood, Wurts (v.p.) —48.

Mr. Stratton moved to amend the amendment, made in committee of the whole, by inserting "ten" [A]instead of 35 years, and he said he did so with the view of preventing the State from ever purchasing the public works with an intention to keep them, [but only] [G]for the purpose of soon selling them again.

[A]Mr. Browning considered this as relinquishing for ever all right to purchase these works, no matter how advantageous it might be to the State. Let the section stand as it was, and the State might purchase the works, and dispose of them to capitalists, who would pay a large advance for them in the thirty-five years. He was opposed to the monopolies now existing, and this amendment would perpetuate them. He was not willing to do that, nor to sell the State. The influence of these companies on the elections might be immense, and when 25 or 30 years hence they might with their wealth subsidize the press, the influence they might exercise would be beyond imagination. He

wished the people of New Jersey to have the opportunity to contract in a matter of such immense importance, as the securing the right of way across their own State.

With reference to the Morris Canal, he asked if the Legislature did not resist the seductive influences brought to bear? and would the gentlemen suppose that future Legislatures would be less pure—more liable to be corrupted or influenced? He did not wish to fetter the State from reaping advantages which might be within their grasp, and he thought the Convention would act unwisely to do so.

Mr. Naar said that if in 25 or 30 years the people wished to legislate with reference to these works, they could alter the Constitution for that purpose. This was only a general provision, not applicable especially to these works, and he looked on it as wise and proper to throw all guards and securities on this point. He wished the time to be short for the payment of the debts which might be contracted, but he thought ten years too short a time.

[J]And on [Stratton's] amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Bell, Jaques, Mickle, Stokes, Stratton—5.

Nays. Mr. Allen, Brown, Browning, Cassedy, Child, Clark, Condit, Connolly, Dickerson, Edsall, Elmer, Fort, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Stites, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Wills, Wood, Wurts (v.p.)—45.

Mr. Cassedy moved to amend the amendment made in committee of the whole, by inserting "twenty-five";

Which was disagreed to.

[A]Mr. Browning submitted the following calculation, providing that if the right course was pursued, the State could purchase the works without incurring any debt at all!

He stated that $30,000 a year set apart as a fund and continued at interest for 35 years would amount to more than $2,500,000—a fund sufficient to purchase the road without any other appropriation. That $30,000 a year was guaranteed to [by] the company, so that to set apart that annuity as a fund it would enable the State to purchase the road by its own proceeds, now guaranteed in 35 years.

Or if the State thought it advisable, she could enjoy the $30,000 a year until 1869 and appropriate to any incidental purposes; and then

by a simple appropriation of $30,000 a year for 35 the road would pay for itself. If then in 1869 a contract could be made with the present Company or capitalists for $60,000 a year, $30,000 could be set apart as a fund and the other $30,000 used for ordinary State purposes.

Mr. Jaques was in favor of the amendment, and considered that the calculation of Mr. B. [proved] exactly the reverse of the position he had assumed.

[J]The question then recurring on agreeing to the amendment made in committee of the whole, [G]striking out twenty and inserting thirty five years.

[J]The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Browning, Child, Clark, Dickerson, Edsall, Elmer, Field, Gilchrist, Green, Halsted, Hibbler, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Marsh, Neighbour, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Stites, J. R. Thomson, R. P. Thompson, Westervelt, Wills, Wood, Wurts (v.p.) —33.

Nays—Mr. Bell, Brown, Cassedy, Condit, Connolly, Fort, Haight, Jaques, Lambert, Mickle, Naar, Ogden, Stokes, Stratton, Swain, Vanarsdale, Vroom—17.

The same section being still under consideration,

The amendment made, in committee of the whole, to add the following to the end of the section: "This section shall not be construed to refer to any money that has been, or may be deposited with this state by the government of the United States", was then agreed to.

Pending the consideration of the nineteenth section,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

Mr. Ryerson offered the following:

Resolved, That a committee of three be appointed to employ a printer, to print and publish the journal of this convention;

Which was read, and,

[A]Mr. J. R. Thomson thought the Journal should be printed early, and hoped the resolution would be adopted.

Mr. Wood should prefer that the resolution should be so modified as to give the printing to the lowest bidder, as was that upon the current printing.

[J]On motion of Mr. Green, [the resolution] was ordered to lie on the table, [A]although he thought that his colleague was right in saying that the Journal should be printed early.

At the request of several members of the minority on that question, [J]Mr. Wood moved to reconsider the vote by which the tenth section of the second article of the report of the Committee on the Appointing Power and Tenure of Office, [A]allowing each person to vote for only a majority of Justices of the Peace, in each township, [J]as amended, was adopted.

[A]Here a scene of great disorder ensued which occupied half an hour—in questions of order, amendments, reconsideration &c. &c.

[G]This motion was discussed for some time by Messrs. Ewing, Child and others, the Convention meanwhile manifesting great impatience. At length the discussion was cut short by Mr. Ryerson's moving the previous question.

[J]And on the question, shall the main question be now put? it was determined in the affirmative.

And on the main question, shall the tenth section be reconsidered?

The yeas and nays were demanded, and

It was determined in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brown, Browning, Child, Clark, Condit, Dickerson, Edsall, Field, Gilchrist, Green, Haight, Halsted, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Lambert, Marsh, Naar, Neighbour, Parker, Parsons, Ryerson, Schenck, Stites, Stratton, Swain, Ten Eyck, R. P. Thompson, Westervelt, Wurts (v.p.)—33.

Nays. Mr. Cassedy, Connolly, Elmer, Ewing, Fort, Holmes, Mickle, Ogden, Pickel, Pitney, Stokes, J. R. Thomson, Vanarsdale, Vroom, Wills, Wood—16.

Mr. Ryerson moved to reconsider the vote, by which the amendment made, in committee of the whole, to the tenth section of the second article of the report on the appointing power and tenure of office, striking therefrom the words following, *viz:*

"In all elections of justices of the peace, if more than two are to be elected in the township or ward, no elector shall vote for more than one person; if no more than four are to be elected, no elector shall vote for more than two; and if five are to be elected, no elector shall vote for more than three";

Which was agreed to.

Mr. Hornblower moved to amend the amendment, made in committee of the whole, by adding thereto the words "until otherwise

provided by law."

[A]Mr. Wood had not moved the re-consideration for the purpose of having any amendment offered. He understood that the question was to be taken on the section as it stood and advantage had been taken and a trap sprung upon him at least by the Chief Justice. (Laughter.)

Mr. Condit opposed the section and the amendment as he considered the principle radically wrong.

Mr. Hornblower replied, and was willing to vote for the section with the amendment.

Mr. Vroom opposed the section. He contended that it was not right to prohibit any person from voting for the persons who are to rule over him. The Justices would not be elected by the people, but by half the people; and he was almost disposed to question the right of the people themselves to adopt such a method. It might be very harmonious and all that, but it would be at the expense of a great principle.

[J]The previous question being demanded [A]by Mr. Ryerson, [J]there was a second;

And on the question, shall the main question be now put? it was determined in the affirmative.

The amendment to the amendment, in committee of the whole, was then disagreed to.

The question then being on agreeing to the amendment made in committee of the whole,

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Cassedy, Condit, Connolly, Dickerson, Elmer, Ewing, Field, Fort, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, Lambert, Mickle, Naar, Neighbour, Ogden, Pickel, Pitney, Schenck, Stites, Stokes, Stratton, Swain, J. R. Thomson, Vanarsdale, Vroom, Wills, Wood, Wurts (v.p.)—35.

Nays. Mr. Allen, Bell, Brown, Browning, Child, Clark, Edsall, R. S. Kennedy, Marsh, Parker, Parsons, Ryerson, Ten Eyck, R. P. Thompson, Westervelt—15.

The section, as amended, was then adopted.

The convention then proceeded to the consideration of the unfinished business of the morning, being the report of the Committee on the Legislative Department, as amended in committee of the whole.

The nineteenth section being still under consideration,

Mr. Browning moved to amend the same, by striking out the

following words: "impose and provide for a direct annual tax, sufficient with such other appropriations as may be made therein" and insert "make provision." [A]He said his object was, to provide that the Legislature should not be *compelled* to pay for the purchase of our public works, by tax. We cannot tell what will be the situation or resources of the State 25 or 30 years hence. To raise money by direct tax is now an odious measure. It may and probably will be so then—and this section as reported, will give those companies all the advantage of the prejudice then existing against that peculiar mode of raising money, without the State gaining any thing from it. He thought that when we had provided, that the debt shall be contracted only by a specific law—that it shall then be submitted to the people and receive the sanction of a majority—and that the principal and interest shall be paid off in 35 years, we have thrown around the contraction of debts by the State of New Jersey all the safeguards which are necessary, without connecting with it, the odious feature of taxation. He should want no other feature than this to prevent the sanction of the people at a popular election if only *one cent* were to be raised from each individual.

He looked forward to the time when the State without risk at all, might reap great advantages by having the control of the right of way across the State. He might be mistaken, but he did not want unnecessary embarrassments thrown in the way.—He had shown this morning how $2,500,000 might be raised, in 35 years without resorting to taxation, from the annual income of the road. It can never be less than $30000 and now amounts to $40000 from transit duties, dividends, &c. In 1843 165,000 passengers crossed the State in these lines—it is found from actual experience that the travel increases at the rate of 20 per cent per annum. It will thus double in five years. At that rate in 1869 (when the State will have the right to purchase these works) the number of passengers will be 485,000—receipts of the State from transit duties $50,000 and from dividends &c $28,000 making $78,000.—Now he asked why shall not the necessary sum be raised from these sources—the profits of the road, to pay for these works, without resorting to direct taxation?

For these reasons, he objected to compelling the Legislature to lay a direct tax. The people in 1869 will be more competent to judge of their own interests, and of the peculiar resources of the State, than we can now. No man can now say that it will be wise for the State then to resort to direct taxation, while it may be necessary for the State to possess these works, to dispose of again to capitalists,

or to some other company, or to the same company, in order to derive some adequate remuneration for the right of way across the State.

He was willing that the people should say, not only by their representatives, but individually, whether they were willing to incur the debt, but he was not willing to take down with the law the odious feature of direct taxation, and the prejudice that it would create in favor of the companies. He would leave to the people of that day, who are to pay the debt after we shall have passed away, to say *how* they would pay it.

Mr. Condit said the section left the Legislature at perfect liberty to carry out the calculation of the gentleman from Camden and accumulate the funds as fast as possible, and only to raise by tax enough to pay the balance—and he thought when his friend had lived as long as some others, he would be satisfied that his calculations could not be carried out. He has made no allowance for the defalcation of Treasurers, of whom I have seen three in my time. His calculations too, as to the accumulation at compound interest, cannot be realized.

Mr. Hornblower alluded to the fact of his having been in the Legislature when these charters were granted, and to the grounds upon which they were granted. He said he did not want the State to buy these works, but he wanted some means to compel the companies to come to fair and proper terms.

Mr. Child considered the amendment but another form of phraseology. The money will still have to be raised by taxation, if it cannot in any other way.

Mr. Stokes hoped the amendment would not be agreed to.

It was not agreed to.

Mr. Vroom wished to propose another amendment. Suppose a subsequent Legislature should repeal the law which provides for the payment of these monies? He knew "it might be said that it would impair the obligation of a contract," but he had some doubt whether it could be considered a contract or not. He therefore moved to amend, by inserting, after the words "contracting thereof", the following: "and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and satisfied."

Mr. Ryerson. That will merely prevent repudiation.

Mr. Vroom. That is all, sir.

Mr. Browning submitted that that was carrying things to an extreme. We have heard democracy loudly cried up here—*vox populi, vox Dei*, but really you wont trust the people at all—you wont let the people by their representatives, repeal their own laws!

Mr. Vroom said it was a new subject, and he had proposed the amendment from a sense of the necessity of extreme caution—but if it was thought to be unnecessary, or even the whole section, he would cheerfully submit.

Mr. Allen hoped it would be adopted. It will prevent repudiation only, and he thought that if there had been a similar provision in the Constitution of other States, they would now have more honor and more credit. The people of Pennsylvania would have risen and stopped their Legislature in its mad career, and he thought it was more from good luck than any thing else that we were as prosperous and free from debt as we are.

Mr. Pickel called the previous question which was seconded.

And on the question, shall the main question be now put? it was determined in the affirmative.

The question then being on agreeing to the amendment, the yeas and nays were demanded, and

It was decided in the affirmative, as follows, viz:

Yeas. Mr. Allen, Brown, Cassedy, Clark, Connolly, Dickerson, Edsall, Elmer, Ewing, Field, Fort, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Pitney, Ryerson, Sickler, Stokes, Stratton, Swain, Ten Eyck, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Wills, Wood, Wurts (v.p.)—38.

Nays. Mr. Browning, Child, Condit, Gilchrist, Halsted, Hornblower, Marsh, Parker, Parsons, Pickel, Schenck, Stites, Williamson (pr.)—13.

The nineteenth section, as amended, was then adopted.

The twentieth section being under consideration,

And the question being on agreeing to the amendment, made in committee of the whole, by striking out the section, and inserting the following, as a substitute:

"XX. The assent of two-thirds of the members elected to each house shall be requisite to the passage of every law appropriating public money or property to local or private purposes; and also to the passage of every law granting special rights or privileges, or for creating, continuing or renewing private corporations, other than those for religious, literary or charitable purposes, or for works of public improvement."

Mr. Ryerson moved to amend the substitute, by striking out the words "or for works of public improvement."

[A]Mr. Allen objected to the whole section upon the principle that it was opposed to all ideas of republicanism. You allow a bare majority to submit future amendments to the Constitution, but require two thirds to grant a charter! The effect will be that it will be easier to alter the Constitution than to obtain a charter, and the lobbying will commence for that first. There is no more liberty, prosperity, virtue or happiness any where than in the New England States, and there is none of this jealousy of incorporations there. They are scattered all over the states, and we seldom or never hear of injury from them. You can stand on the corner of a street in Boston and see 30 banks, and in no State has there been less loss from banks than in Massachusetts. Rhode Island too, although a much smaller state has double the number of banks which New Jersey has. He was willing, however, to require a majority of two Legislatures to grant a charter.

Mr. Lambert called the previous question.

Mr. Randolph said the amendment was a very important one, and nothing had been said about it.

Mr. Lambert. The call for the previous question is not withdrawn.

Mr. Hornblower. It is very hard that we must be compelled to vote, before we can understand an amendment!

The P. Q. was not seconded.

Mr. Randolph said the effect of requiring a two thirds vote to incorporate works of public improvement, would be to give an entire monopoly to the present companies.

Mr. Parker could see a good reason for requiring two-thirds for special privileges, and not for works of public improvement. There is always private opposition to the latter, such as roads or bridges. They cross some persons' land or interfere with them in some other way and it is very easy for this private opposition to prevent a two thirds vote. He hoped the words would not be struck out.

[J]And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Connolly, Elmer, Ewing, Fort, Naar, Pickel, Ryerson, Schenck, Vanarsdale—9.

Nays. Mr. Allen, Bell, Brown, Child, Clark, Condit, Dickerson, Edsall, Field, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Mickle, Neighbour, Ogden, Parker, Parsons, Pitney, Randolph, Sickler, Stites, Stokes, Stratton, Swain, Ten Eyck, R. P. Thompson, Vroom, Westervelt, Williamson (pr.), Wills, Wood, Wurts (v.p.)—42.

Mr. Ryerson moved further to amend the substitute, by inserting, after "continuing", the words "altering, amending";

Which was agreed to.

Mr. Marsh moved to amend the substitute, by striking out the words "continuing or renewing." [A]His object was to create a distinction between *creating* and *continuing* a charter, and he submitted whether it would be right after the people of any place had got a bank, and the business of the neighborhood had increased very much from that cause, to compel it to wind up its business for want of a two-thirds vote to renew its charter, or whether it would be right, to compel a manufacturing company to cease its operations, and to throw many hands out of employ, or compel them to change their residence, because only a little less than two-thirds were willing to continue it? He said he had no interest in the matter himself, but his constituents had, and he should be wanting in his duty to them and to his own feelings, if he did not bring the subject before the Convention.

[J]And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Browning, Green, Halsted, Hornblower, R. S. Kennedy, Marsh, Ogden, Parsons, Ten Eyck, Vanarsdale, Westervelt, Wood—14.

Nays. Mr. Cassedy, Child, Clark, Condit, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Gilchrist, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Parker, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Stites, Stokes, Stratton, Swain, J. R. Thomson, R. P. Thompson, Vroom, Williamson (pr.), Wills, Wurts (v.p.)—38.

[A]Mr. Allen hoped the question would be taken on his amendment—"to require a majority of two Legislatures." He said that what was passed by one, would then have to go before the people; and it could not be finally passed unless they approved of it. The two-thirds' principle, (if it had been required) would have defeated any charter which has been granted for the last 15 years. His plan was the one adopted in Pennsylvania, and he hoped it would be adopted here.

[J]Mr. Allen moved to amend the substitute, by striking out after "privileges", the words "or for" and inserting "every law", and adding at the end "shall receive the assent of a majority of the whole number of each branch of the Legislature for two successive years."

And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brown, Jaques—4.

Nays. Mr. Browning, Cassedy, Child, Clark, Condit, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Sickler, Stites, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Westervelt, Williamson (pr.), Wills, Wood, Wurts (vp.)—47.

Mr. Child moved to amend the substitute, by striking out the word "also" and inserting "the assent of three-fifths of the members elected to each house shall be requisite";

Which motion was agreed to, 26 to 21.

Dr. Schenck's speech:

Mr. President.—The question now under discussion whether any legislative act conferring corporate powers or special privileges should be granted without the assent of two-thirds of all the members elected to both branches of the Legislature is in my judgment, of the highest importance, and should be deliberately considered by this Convention, both with regard to its anti-republican character, and the practical influence it may have in retarding the developments of our resources and restraining the salutary operations of commendable enterprise. I am aware that this Convention (in committee of the whole) gave a decided indication of regarding this provision with approbation and favor.

And I am free to admit that respect for the opinion of those with whom I have the honor to be associated in this Convention should prompt me to defer to that opinion, and distrust my own convictions of propriety when they impel me to conclusions so widely different than them. Admonished by these considerations, I shall very briefly assign the reasons which have induced me to regard with repugnance a provision which I conceive to be hostile to, and at variance with the elementary principles of free government.

In a preceding part of this Constitution (sec. 10) it is provided that all bills and joint resolutions in order to their passage, shall require a majority of all the members elected to each body personally present, and agreeing thereto. This section provides a gene al rule in accordance with the true spirit of our free institutions, salutary in its operation, and equal in its application, it makes no invidious discriminations, and it is based upon the substantial consideration that in a community of freemen all are equally entitled to have unrestrained access to the

legislative body for all purposes legitimately meriting legislative aid. It will also be remembered that no objection was made to this sound republican principle; it was agreed to without a dissentient voice, it was adopted without a discordant negative. With these facts before us, I would respectfully enquire of this Convention with what propriety we are now called upon to adopt another standard by which to graduate the claims of respective applicants for legislative protection.

If under this benign influence of free Government, we are all entitled to equal rights and benefit from the legislative enactments, how shall we reconcile to our sense of propriety and equal rights, that for certain purposes a majority shall be competent and efficient, while for other purposes equally legitimate and advantageous to the community, the majo[illegible] divested of its potency by an arbitrary provision in the Constitu[illegible].

I am a[illegible]ed, Mr. President by reference to the Constitutions of several states of this Union that there are a few containing this restriction and illegitimate provision. But Sir, whenever found or by whomsoever inculcated as a useful or conservative requirement, with all deference and respect to others I regard it as an excrescence of arbitrary power and neither suited or adapted to the feelings or spirit of a free people. That it is derogatory to every sentiment of republicanism, nullifies the popular will and disclaims all reference to the majesty of the people.

This Convention have determined that the magistrate shall not be clothed with a negating power that shall overshadow the legislative department, believing such a power would be incompatible with free government. And Sir, strange as it may seem this same power is conferred by this section upon the legislative body itself. By this extraordinary provision we have presented to our consideration the unseemly anomaly of a portion of the legislative body nullifying and counteracting the will of the majority, and yet so constituted as to have no identity, and consequently no responsibility, accountable neither to the people by whom they were elected, or to the body of which they form a component part. I have never yet been able to perceive the force of a single argument offered in its support, or comprehend the far-seeing policy which regards it as a shield to protect the people against their own representatives. I must confess my entire inability to determine to which of the departments of the government it properly belongs, whether to the legislative, the executive or the judicial. I rather incline to the opinion that it should be regarded as a *legislative "Lusus naturae"* which belongs to no form of Government exclusively. It has

however the distinctive features of the several forms of government; as it operates through the action of agents chosen by the people it is republican. But as it disregards the will of the majority it is arbitrary. And as its mandates defy the popular will, it portrays the features of despotism. I would respectfully suggest that if it be thought advisable by this Convention to create a reserve power to counteract or restrain the ordinary course of Legislation, would it not be more in accordance with the *spirit of the age* and subserve more effectually the security of the people if the legislative body when they convene should be directed to appoint from among themselves a board of "censors" who must concur with the majority to render valid and operative all legislative action embracing applications for "chartered rights and privileges." I am persuaded that such a division of legislative responsibility would be more satisfactory to the people as it would be more republican in its character, and sustainable on the ground of accountability.

The earnestness with which this measure is urged upon the attention of the Convention, naturally directs our enquiries to the record of the past half century, to ascertain whether any evil is there chronicled, resulting from precipitate or unwise legislation which might have been obviated by the *benign* influence of this arbitrary prescription. But to such enquiries the voice of past time responds, that none has been recorded, and that the testimony of the living has repeatedly been delivered in this hall since we assembled here in behalf of the wisdom and Patriotism of those distinguished men who laid the broad foundation of civil liberty, in the fundamental law which will be superseded by the labors of this Convention if the people affix the seal of approbation to the Constitution we are now framing.

As one of the delegates of a free people, I feel responsible for every sentiment I express, and every vote I may be called upon to give, and as one of the people I feel solicitous to exclude from this Constitution any and every provision that may curtail the rights of my fellow citizens.

Another corroborative argument against the introduction of this innovation into an organic law is derived from the fact that the Legislative power is more limited, and better guarded by the present Constitution than by the old one. The Senate is so constituted as to be a more permanent body, one third only will be changed every year. This arrangement will give more stability to that branch of the Legislature, and the majority will at all times be composed of men who will have the benefit of legislative experience and be more competent to discharge judiciously their legislative functions. And therefore we have reason

to believe they will be a salutary check upon the precipitate or inadvertent action of the more popular branch. The executive also has to a certain extent, the power of restraining hasty and improvident legislation by refusing his assent to any bill and return the same to the body in which it originated with his objections thereto.—This restraint upon the legislative power although regarded by some honorable delegates as of little efficiency will conduce very essentially to deliberate action and judicious legislation.

But, Mr. President, if all objection to the anti-republican character of this provision may be obviated, that the inequality it establishes between citizens entitled to equal rights be apparent and not real, and that at any rate a vote of ratification by the people will put an end to all controversy,—yet even then I should regard this requirement as highly inexpedient, and adverse to the best interest of the state. That it is prohibitory in its character must be conceded. I shall not, however, occupy the time of the Convention in detailing the numerous applications for legislative interposition which would be excluded by this excluding prescription. Believing the "two thirds" rule was designed to operate more especially on banking corporations as the advocates of this measure have directed their remarks more particularly against "money corporations". From the course pursued in this discussion I think we may fairly infer that the opposition to all corporate powers manifests a feeling of hostility, to those institutions which fair investigation will neither authorize or approve. That instances have occurred in which bad management has subjected the stockholders, and to a certain extent the community to losses will not be denied. Nor is it my intention to justify connivance at fraud or palliate dishonesty whether practised by individuals or corporations. But the sweeping denunciations against all "monied corporations" is in my deliberate judgment not sustained by facts. That these institutions have been wrongfully accused of defrauding the community and robbing the laborer (to the extent alleged) I shall endeavor to demonstrate. It is asserted that the banking institutions form a community of interests, and that they are allowed to manufacture money, which is a privilege that people do not enjoy. But this is not true in point of fact for the people individually have a right to issue their individual notes payable on demand as well as the banks or any other corporate company and the chartered companies are bound to redeem their notes more promptly than individuals in that respect, therefore they are not equal and both are bound to meet their liabilities to the extent of their means. In relation to losses sustained by the bankruptcy of "money corporations" it falls

most heavily on that portion of the community who are stockholders in these institutions. This results from the established habits of doing business in a community where banks are located. It is well known that in every city, town or extensive village where merchandise, manufactures, or trade to any extent is carried on that business men are in the habit once in 24 hours of depositing their money for safe keeping in the bank or banks in the neighborhood and that for money so received and deposited, the bank becomes responsible for the payment of the same on demand and is bound to the last dollar of its means to meet such liabilities. The money collected by individuals in the course of business and deposited as before stated may be and usually is made up of paper issued by several banks and in this way the banks become liable for each other's issue, and practically are surety for each other. From this plain statement of the ordinary transaction of banking operations it will be perceived that the bankruptcy of any one of these institutions must involve the others in heavy losses, and the result must inevitably be that the stockholders sustain the heaviest burden of loss from the failure of these institutions—while those individuals who have no capital invested are rarely losers to any considerable amount. Again that portion of the community who from caution or other motives prefer to be their own custodians, and lock up their surplus capital in their own vaults always procure the specie for that purpose. Hence it follows that the habits of business men and the caution of those who keep their own funds prevent their liability to much loss by the failure of banks.

If the view here presented in relation to individual exemption from losses occasioned by the inability of banks to pay their debts, be founded on facts (with exceptions of comparatively small amounts) we shall next inquire whether the State has been the loser by the operation of the banking system. In 1810 acts were passed by the legislature imposing a tax of one-half of one per cent on the banking capital in the State, and from that period up to the present time this tax has been continued and the whole amount received into the treasury from this source of revenue exceeds four hundred and fifty thousand dollars. There is no species of property in our State that pays so high a rate of tax as the bank capital, and none is paid more promptly. In a pecuniary point of view therefore banks have been advantageous to the people by contributing largely to supply the State treasury. If then, sir, they be fruitful sources of revenue to the State, and essentially necessary to give activity to enterprise, animation to the multiplied pursuits of merchants, mechanics and traders and an efficient impulse to every variety of industry, I would respectfully inquire with what propriety can this Convention affix a mark of disapprobation upon all applicants for corporate powers whether for the purposes of facilitating manufacturing industry or establishing or renewing banking associations? Does the State in conferring these privileges surrender any portion of its sovereignty? Or does the community suffer any abridgement of its capacity to secure to all citizens the full enjoyment of the blessings of rational liberty? No one I presume will maintain the affirmative of these interrogatories. The citizens of New Jersey are as free and as fully in possession of their individual rights, as they have been at any period since the promulgation of the old Constitution. The evidence of this assumption is found in the fact that the present Constitution nowhere contains a provision requiring a property qualification either in the electors or those who may be elected.

There are also other considerations of magnitude which materially connect themselves with the discussion of this subject. The peculiarity of our geographical position between two large States precludes us almost entirely from any participation in the profits and advantages of commerce. This great source of state wealth is almost exclusively enjoyed by New York on the one hand and Pennsylvania on the other. Our agricultural resources are also very much circumscribed both on account of our limited territory and the unproductiveness of a very considerable portion of our soil. Such being our relative position I would respectfully submit to the consideration of this Convention whether it would not be our true policy to make available and productive those local advantages with which we are favored. To this end I am persuaded nothing will contribute more largely than a course of policy founded on the equitable provision of equal protection to all. The soundness of the proposition is abundantly sustained by reference to the condition of those States where industry and enterprise have been fostered by legislative patronage. In what State of this Union do we find industry and productive labor in all its ramifications more abundantly rewarded than in Massachusetts? And where in this vastly extended territory and wide-spread union do we find intelligence more diffuse, the arts and sciences more liberally patronized or the blessings of free government better secured? And what I would respectfully inquire have been the causes which have placed in advance that time-honored Commonwealth? May not her advantageous position be fairly attributed to that far seeing and wisely established policy which invariably results from liberal and judicious legislation, cherishing with patriotic solicitude every pursuit consistent with the largest

amount of civil liberty? And have we not reason to believe that if we pursue a system of liberal and enlightened legislation we shall experience the same results? If like causes produce like effects why may not our State compete advantageously with any of our energetic and distinguished sister republics in making available and calling into requisition the vast amount of water power within our borders? What reason can be assigned why Trenton, Paterson, and other situations within our territory should not rival successfully the prosperity and reputation of Lowell and many other places possessing naturally no greater advantages than those we have referred to. What is it but manufacturing industry, and productive labor that has given to the county of Essex, her large amount of active citizens, and growing reputation? In my judgment, sir, the path of duty is plainly indicated, and if we are prudent we will steadily pursue it. For one I am opposed to any organic rule which comes in conflict with the elastic spirit and genius of our free institutions. I decidedly prefer a liberal yet judicious policy to one that is so stringent and prohibitory as to paralyze enterprise and unnerve the right arm of industry.

In conclusion, Mr. President, I sincerely hope this obnoxious feature will not be retained, for I feel altogether reluctant to establish a constitutional provision by which legislative patronage is to be measured out upon unequal terms to a community of freemen.

Mr. Pickel replied [advocating the section].

Mr. Hornblower likewise opposed the section. He held that the principle of it was unjust and an innovation upon all former usages. He said a mere majority may make a criminal code—may pass laws affecting our lives, our liberties and our property, and even anything that is dear to us, and yet you require a two thirds' vote to grant a charter! He said that the principle owed its origin to a sort of political feeling or phrenzy against corporations; and he contended, that although these institutions had not always prospered, and although laborers and workmen have suffered losses from them, that they have still been a great advantage to the community. He opposed the section warmly.

Mr. Vroom replied. He said he had certainly no political objects to accomplish, and he hoped he could look at the subject as calmly and fairly as any honorable member. He said he should not be deterred from doing his duty by being called a political maniac, or by being charged with having caught a political phrenzy, and he hoped he should be allowed to perform that duty without the imputation of any such motives. He said, we have been accused of submitting a new principle of legislation—of departing from those old principles which have

governed us for the last 60 or 70 years. We have been told that a mere majority may pass laws affecting our lives and liberties. I grant it, sir. I grant it. But who ever heard that any one was entitled to any exclusive or special privileges or protection by a mere majority? I never did; and gentlemen must recollect that all are entitled to these privileges of common right—and that *they* are the innovators, and not we, when they grant these exclusive and special privileges in derogation of the common right. They are making innovations. Mr. V. contended that it was interfering with the constitutional provision of equal rights to allow these companies to establish themselves and do the same kind of business as individuals, but with greater privileges. The individuals are personally responsible to the whole amount of their property for their debts, while the officers of these companies are not. And so if I have established a small manufacturing business and am successfully carrying it on, and you permit a half dozen great corporations to come and set themselves down by my side, you compel me to break and to wind up my business—and those in my employment must suffer, for I cannot compete with them.

Mr. V. contended that it was our duty to prevent, if possible, the losses of the poorer classes of the community, which have been referred to. Their losses may be not great in amount, but it is all they have—and when they have lost their all, no man could lose more. He would adopt the words of the poet—

"The poor beetle that we tread upon
In corp'ral sufferance, feels a pang as great
As when a giant dies!"

Mr. V. proceeded to advocate the principle of the section as correct and conservative. We regret that we have not a full report of Mr. V's speech, which was a very eloquent one.

He concluded by saying that he disliked the amendment that had been adopted, which allowed a majority of three-fifths to incorporate a Bank; and by way of restoring it, offered an amendment, requiring a "two-thirds' vote to incorporate a company with banking or discounting privileges." [J]Mr. Vroom moved to amend the substitute, by inserting, after the word "purposes," the following: "or for creating, renewing or extending any corporate body with banking or discounting privileges"; and also to insert, between the words "every" and "law", the word "other."

[A]Mr. R. S. Kennedy. I have no sympathy with this spirit of radicalism on the subject of corporations. I am a friend to corporations. They have done more to increase the prosperity of our State than any

thing else. Let the legislature grant all that may apply, if the object is to benefit the community; and if the public interest require them, they will be called into existence; if not, they can certainly do us no harm. But why this opposition to corporations? What have they done?—The gentleman from Hunterdon, (Mr. Pickel) after proclaiming his determined hostility to all corporations in general, cast his eyes around the circle of our State to find some fixed object on which to pour out the vials of his indignation, but he landed at last in the middle of the Trenton water power.

Now, Sir, I would ask gentlemen to follow this great monument of the wisdom of our Legislature, and the enterprise of our citizens, from the place we now occupy to its termination—to witness the business and enterprise already called into existence by its means—to observe the nucleus of a great manufacturing city, destined at no distant day to surround its borders; and for centuries to come to be the life and ornament of the capital of our State; and then if they can repress their astonishment that any gentleman should cite this as an instance of injurious legislation. What if the enterprising citizens who projected and completed the work have been unfortunate in their investments, and sunk their funds; yet the work remains, the waters of the Delaware continue to flow along its banks, the wheels of its numerous manufactories are still revolving, and the hundreds of operatives fed and clothed by its aid, are pursuing the even tenor of their way. Individuals have suffered, but the public have been benefitted. And this is generally the case with corporations which fail. The Morris Canal has been an entire loss to stockholders, and yet it continues to be an immense public benefit to the counties through which it runs. And although individuals have lost money by its failure, yet the general benefit to the community at large exceeds a thousand fold individual losses.

Gentlemen say that corporations sometimes break and individuals lose money by them. Now if this argument is worth any thing, it would only prove that corporations ought not to be trusted at all, for if corporations granted by a majority are dangerous, would not corporations granted by two-thirds be equally dangerous; or is it the object of gentlemen, by requiring two-thirds to pass every act of incorporation, to prevent by a radical minority of one-third, any act whatever. This no doubt is the gentlemen's real object, and why then not do directly, what they are endeavoring to do indirectly. The whole scope of the arguments on the opposite side is against all corporations. They believe them to be dangerous to our liberties, injurious to our interests, and

opposed to the theory of our government. Then why do gentlemen sail under false colors? Why do they not introduce a clause to prevent our legislature from granting any charter whatever? This certainly would be their proper course. The gentleman from Somerset expressly declared that "corporation was an innovation on the principles of our government:" and yet the honorable gentleman is willing two-thirds should make this innovation—just as if the number that perpetrated the wrong could make it right. If I believed with the honorable gentleman, I could not conscientiously consent to any corporation whatever, and I am surprised at his inconsistency. The gentlemen in favor of this section have shown us what they would do if they had the power. They have ventured to show their teeth at these little monsters, but if they believe them to be such dangerous creatures as they have represented them to be, they had better come manfully up to the work and strangle them at once, than to keep up this continued snapping at their heels.

Mr. Allen was opposed to the views taken by the gentleman from Somerset. If he could conscientiously accord with them, he should vote as he doubtless will. The incorporation of a bank was no more a special privilege than the licensing of an attorney.

And on [Vroom's] amendment the yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Cassedy, Condit, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Gilchrist, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbor, Parker, Pickel, Pitney, Ryerson, Sickler, Stokes, J. R. Thomson, R. P. Thompson, Vroom, Wills, Wurts (v.p.)—31.

Nays. Mr. Allen, Brown, Browning, Child, Halsted, Hornblower, R. S. Kennedy, Ogden, Parsons, Randolph, Schenck, Stites, Stratton, Swain, Ten Eyck, Westervelt—16.

The question then recurring on agreeing to the substitute, as amended,

Mr. Browning said he would give his vote on the ground that he believed that in all ordinary matters of legislation, the majority should govern.

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *vis:*

Yeas. Mr. Cassedy, Condit, Connolly, Dickerson, Edsall, Elmer,

Ewing, Fort, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Parker, Pickel, Pitney, Ryerson, Sickler, Stokes, J. R. Thomson, Vanarsdale, Vroom, Wills, Wurts (v.p.)—30.

Nays. Mr. Allen, Brown, Browning, Child, Halsted, Hornblower, R. S. Kennedy, Ogden, Parsons, Randolph, Schenck, Stites, Stratton, Swain, Ten Eyck, R. P. Thompson, Westervelt—17.

The twenty-first section being under consideration,

The amendments made in committee of the whole, by striking out the word "the", before "term", and inserting "a"; and also striking out the word "of", after "term", and inserting "not exceeding", were severally agreed to.

The question being on agreeing to the amendment, made in committee of the whole, to the same section, by adding thereto "and all such charters may be altered, modified, or repealed by the legislature, whenever, in their opinion, the public good may require it; and every such charter, or a renewal of the same, shall contain a clause to that effect, or be inoperative"; [A]Mr. Green opposing it, as a contract made by a two-third vote may be repealed by a majority if the section stood as amended in committee of the whole.

[G]Mr. Green asked the yeas and nays [J]and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Cassedy, Connolly, Dickerson, Edsall, Fort, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parker, Pickel, Pitney, Ryerson, Stokes, J. R. Thomson, R. P. Thompson, Vroom, Wills—25.

Nays. Mr. Bell, Browning, Child, Gilchrist, Green, Halsted, R. S. Kennedy, Randolph, Schenck, Sickler, Stites, Stratton, Swain, Ten Eyck, Vanarsdale, Westervelt, Wurts (v.p.)—17.

On motion of Mr. R. S. Kennedy, it was

Ordered, That when this convention adjourns, it will adjourn to meet to-morrow morning, at eight o'clock.

Pending the consideration of the twenty-first section,

The convention adjourned till to-morrow morning at eight o'clock.

[J]SATURDAY MORNING, 22d June.

At eight o'clock the convention met pursuant to adjournment, and was opened with prayer by the Rev. Mr. Kidder.

On motion of Mr. Ryerson,

The convention proceeded to the consideration of the unfinished business of yesterday afternoon, being the report of the Committee on the Legislative Department, as amended in committee of the whole.

The twenty-first section being still under consideration,

Mr. Jaques moved to amend the same, by inserting, after "corporations", the words "and manufacturing companies" [G]in the section providing that bank corporations shall be limited to a term not exceeding twenty years, and may be repealed by a majority of the legislature.

[A]In advocating this amendment Mr. J. said he opposed the doctrine advanced by Mr. R. S. Kennedy and said it was the doctrine of a gambler, who consoled himself in the same way.

The amendment was not agreed to.

[G]Mr. Jaques said he would then, with the expectation of the same fate, move [J]further to amend the same section, by adding thereto the following: "and the president and directors shall be individually liable for the debts of their respective companies, to the amount of their estates, and the stockholders to double the amount of stock held by them respectively."

[A]Mr. Jaques advocated this briefly, taking the same ground as he took in Committee of the whole, that Legislatures had no right to incorporate companies to issue paper money, when by the Constitution of the U.S., the States themselves were not allowed to issue bills of credit to represent money.

He insisted as before that Banks were not only useless, but injurious wherever they exist.

[J]And on this amendment the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Connolly, Fort, Hibbler, Jaques, Lambert, Naar, Pickel, Sickler—8.

Nays. Mr. Allen, Bell, Brown, Browning, Cassedy, Child, Dickerson, Edsall, Ewing, Gilchrist, Green, Haight, Halsted, Holmes, P. B. Kennedy, R. S. Kennedy, Laird, Mickle, Neighbour, Ogden, Parker, Parsons, Pitney, Randolph, Ryerson, Schenck, Spencer, Stites, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, Vanarsdale, Vroom, Westervelt, Wills, Wurts (v.p.)—38.

The same section being still under consideration,

Mr. Ryerson moved to reconsider the vote by which the amendment, made in committee of the whole, adding thereto the following: "and all such charters may be altered, modified, or repealed by the legislature, whenever, in their opinion, the public good may require it: and every such charter, or a renewal of the same, shall contain a clause to that effect, or be inoperative";

Which motion was agreed to.

[A]Mr. Vroom said this and the 20th section ought to be taken in connection with each other, and he moved a reconsideration of the 20th section, and on the amendment to agree to the 21st section in order to have both postponed, so that they could be looked into, and if possible some sections introduced which would be more generally acceptable.

The 21st section was postponed, and the 20th section being reconsidered it was also postponed for further action and consideration.

[J]The twenty-second section being under consideration,

And the question being on agreeing to the amendment, made in committee of the whole, by striking out the section, the same was concurred in.

Mr. Child, on behalf, and at the request of the president, who was unable to attend this morning, offered the following, to be inserted as the twenty-second section:

"Sec. XXII. No new county shall be created, unless the territory proposed to be set off into a new county, and the territory left in the county or counties affected thereby, shall severally be entitled, by the population embraced in each, to at least two representatives in the General Assembly, agreeably to the ratio which shall then be established."

[A]Mr. Browning was in favor of the principle, but asked how it would operate if it was proposed to unite two Counties, say Bergen and Hudson.—This section would prevent such an union. If it was to operate only to the creation of a new County, he had no objection to it, but now he thought difficulty would arise.

Mr. Child thought the article could not admit of such a construction. It was intended to prevent the making of small Counties entitled to only one representative. How could this apply to a case where no territory was left, as in the case of uniting Bergen and Hudson.

Mr. Fort offered an amendment that no county or township lines should be altered without two months previous notice duly given in the papers.

Mr. Brown concurred with the substitute of Mr. Williamson, but thought that this matter did not properly belong to the Constitution.

It was more appropriately for Legislative action.

Mr. Browning moved to amend the same, by striking out all to the word "unless", and inserting the following: "There shall be no increase of the number of counties now in existence, by creating a new county."

[A]Mr. Child said the President wished to have a vote on his substitute, unencumbered by any amendment, and if gentlemen chose to amend afterwards, it could be done.

Mr. Allen said the amendment of Mr. Fort and the substitute of Mr. Williamson were entirely disconnected, and Mr. Fort withdrew it for the present.

Mr. Browning's amendment was accepted by Mr. Child so far as he had the right to do so, and the substitute offered by him, as thus amended was before the House.

Mr. Vroom suggested that the effect of the section was to give the Legislature unlimited power to unite Counties, and to diminish the number now in existence.

[A]Mr. Browning said they might reunite Counties as they could not materially affect thereby the representation in the upper House. It was intended to prevent the state being cut up into small counties, and giving these small counties the preponderance of representation in the upper house.

Mr. Ryerson thought that public sentiment had effectually checked all desire to create any new Counties and he predicted that for 50 years no member would have the hardihood to make a proposition of this effect. The appointing power being now taken from the joint meeting there was now no longer a motive for the creation of new Counties for the purpose of securing a majority in the Legislature.

Mr. Child thought this was an argument in favor of the change, the appointing power being now vested in the Senate, and the small Counties which might be created would affect the representation there.

Mr. Condit was in favor of the proposition as it was and Mr. Naar thought Mr. Browning's amendment embarrassed the whole proceedings. He was in favor of the section proposed by Mr. Williamson, but would vote for Mr. Browning's amendment as a separate section.

[G]Mr. Sickler offered the following as an amendment:

That this Convention order in the bill of incidental expenses, an additional amount of pay to sundry members of this body for extra services rendered by the infliction of numerous speeches and amendments; and that such pay be graduated by the number of each, as may appear by the record of the Convention. (Laughter).

The Chair said he did not consider that section in order as an

amendment to the section under consideration. (Laughter.)

[A]Mr. Allen suggested that the substitute ought to prevail to prevent an increase of representation of small Counties in the Senate, with reference to the appointing power.

[G]Mr. Sickler moved the previous question, and it was ordered, and the article agreed to, without a division.

Mr. Fort renewed his motion requiring an advertisement [and] [J]offered the following, to be inserted as the twenty-third section:

"XXIII. No county or township lines shall be altered, unless on proof of two months' previous public notice of such proposed alteration in one of the newspapers circulating therein."

[G]Mr. Connolly moved to add a proviso requiring the consent of a majority of the legal voters in said new county or township, the line of which is proposed to be altered; but after some discussion withdrew it.

[J]And on this question the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Cassedy, Connolly, Dickerson, Elmer, Ewing, Fort, Green, Halsted, Hibbler, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Ogden, Pitney, Ryerson, Stokes, Ten Eyck, J. R. Thomson, Vanarsdale, Vroom, Wills—23.

Nays. Mr. Allen, Bell, Brown, Browning, Child, Condit, Edsall, Hornblower, R. S. Kennedy, Naar, Neighbour, Parker, Pickel, Randolph, Sickler, Spencer, Stratton, Swain, Wurts (v.p.)—19.

[A]A question arose whether this was agreed to or not, some insisting that it required a majority of all the delegates elected, but the Chair decided that it was *not agreed to*. The same difficulty arising as to Mr. Williamson's substitute, the vote on which was taken *viva voce*.

[J]Mr. Ryerson moved to reconsider the vote by which the twenty-second section was adopted;

Which was agreed to.

[G]Mr. Connolly moved to postpone.

[J]Which motion was disagreed to.

Mr. Stokes moved to amend, by striking out the words "there shall be no increase";

Which motion was not agreed to.

The question then being on the adoption of the section, the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brown, Browning, Cassedy, Child, Connolly, Dickerson, Elmer, Fort, Green, Jaques, Parker, Pickel, Randolph, Sickler, Spencer, Stratton, Ten Eyck, Vanarsdale, Wills—21.

Nays. Mr. Condit, Edsall, Ewing, Gilchrist, Halsted, Hibbler, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Mickle, Naar, Neighbour, Ogden, Pitney, Ryerson, Stokes, Swain, J. R. Thomson, Vroom, Wurts (v.p.)—21.

[A]After some discussion as to the effect of taking the questions for final action in so small a house, Mr. Connolly suggested that the Convention had better adjourn, for as the House now stood, any twelve members may kill any section, but the Convention finally decided to proceed.

[J]The twenty-third section being under consideration, [G]declaring that no divorce bills should be granted, [J]and the question being on agreeing to the same,

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brown, Browning, Cassedy, Child, Condit, Connolly, Dickerson, Elmer, Ewing, Field, Fort, Gilchrist, Green, Halsted, Hibbler, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Naar, Neighbour, Ogden, Parker, Pickel, Pitney, Randolph, Ryerson, Sickler, Spencer, Stokes, Stratton, Swain, Ten Eyck, Vanarsdale, Vroom, Wills, Wurts (v.p.), Zabriskie—42.

Nays. Mr. Edsall, Mickle, J. R. Thomson—3.

The twenty-fourth section being under consideration,

And the question being on agreeing to the amendment, made in committee of the whole, to the same, by striking out the following: "and the legislature shall pass laws to prevent the sale of all lottery tickets, except in lotteries which may now be authorized by a law of this state."

[A]Mr. Child hoped the amendment in Committee of the Whole would not prevail. . . .

Mr. Ryerson requested that the report in the newspaper might be corrected that he had moved to strike out that part of the section in Committee of the whole. He had not made any such motion and was in favor of the provision.

Mr. Hornblower wished the Legislature to pass laws of a highly prohibitory character, even to making it indictable to buy or sell tickets.

Mr. Brown said if the Convention was to undertake to make provisions for all possible evils from gaming, or any other cause, they would have enough to do, to keep them busy to the end of the year. The Laws now existing were as strongly prohibitory as they could be. The question of the lotteries was fully argued and discussed last winter, and all concurred in the opinion that if legal proceedings had

been had against them, the lotteries now in existence might be checked at once.

Mr. Child. Cannot the laws be repealed?

Mr. Brown. Certainly, would you have the Legislature deprived of the power of repealing or altering criminal laws.

Mr. Hornblower said what he wished to say was that by the character of these lotteries now, they were in fact perpetual, for every time they lost on one lottery, they had the right to get up another lottery to make up the loss. Then if they made $10,000 on one lottery, they would take good care to lose fifty or a hundred dollars on the next and thus keep it up forever.

Mr. Ogden was in favor of the section as amended in committee of the whole. Last winter this subject was referred to the Attorney General, but he was prevented from attending to it by illness, and the present incumbent had it under consideration, and was in correspondence in relation to it.

Mr. Allen was anxious to have all lotteries abolished, they were injurious and demoralizing.

If the grant to the present lotteries was perpetual, he thought some measure should be taken to compound it, so it could be extinguished. He was in favor of the amendment.

Mr. Connolly offered an amendment providing that the Legislature should pass laws preventing the sale of *all* tickets in the State.

[J]Mr. Hornblower moved to amend the amendment, by inserting the following: "and no tickets in any lottery, not authorized by the laws of this state, shall be bought or sold within the state."

[G]Mr. Sickler called the previous question; and it was ordered.

[J]The amendment to the amendment, made in committee of the whole, was then agreed to.

The question then being on agreeing to the amendment, made in committee of the whole, as amended, it was determined in the affirmative, [A]ayes 23, noes not counted.

[J]The question then recurring on the adoption of the section, as amended,

The yeas and nays were demanded, and it was decided in the affirmative by the votes of all the members present.

The twenty-fifth section being under consideration,

And the question being on agreeing to the amendment, made in committee of the whole, to the same, [G]that the legislature should pass no law [J]"depriving a party of any remedy for enforcing a contract which existed when the contract was made",

[A]Mr. Vanarsdale said the amendment . . . was novel and he thought they had better pause before this Convention adopted it; was it not far enough to go, to declare that no law should be passed impairing the obligation of contracts, but to deprive them of the power of varying a remedy, was a most important principle.—This was well settled in the courts of the U.S. and no such provision had been adopted in any constitution.

Mr. Ryerson said this only prevented the Legislature from depriving a party of his remedy, and there was a wide distinction between varying a remedy, and depriving a party of his remedy.

Mr. Halsted thought this covered more ground than we could anticipate, and would give rise to much discussion in the Courts.

Mr. Hornblower said he had hoped some provision would have been offered preventing the sale of real estate of infants, as a very great deal of injustice had been done for want of such a restriction.

Mr. Vroom said this had not escaped the consideration of the Committee. The Legislature had for years back so legislated as to impair what are termed vested rights, and he should be glad if there could be some provision whereby these extraordinary applications for the sale of lands, could be referred to the Chancellor or otherwise disposed of, so that injury might not be done. It was a very difficult matter to settle in Convention, but he hoped some effort would be made to do every thing that could be done for the good of the people.

As to the provision under consideration Mr. Vroom thought it was worthy of mature reflection, and after arguing at some length, he thought that with the light now before us, he would vote for this amendment.

Mr. Green said he was clearly of opinion that it was a safe provision and he could not foresee any difficulty which might arise.

[G]Mr. Stokes [Child, according to the Advertiser] moved the previous question, [J]and there was a second.

[G]Mr. Browning moved to amend so as to prohibit the passage of any private law impairing vested rights. (Cut off by the previous question.)

[J]And on the question, shall the main question be now put? it was decided in the affirmative.

And on the question, shall the amendment, made in committee of the whole, be agreed to?

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Bell, Browning, Cassedy, Child, Condit, Connolly,

Dickerson, Edsall, Elmer, Ewing, Field, Fort, Green, Hibbler, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Pickel, Pitney, Randolph, Ryerson, Sickler, Spencer, Stratton, Swain, Ten Eyck, J. R. Thomson, Vroom, Wurts (v.p.), Zabriskie—36.

Nays. Mr. Allen, Brown, Gilchrist, Halsted, Ogden, Parker, Stokes, Vanarsdale, Wills—9.

The section, as amended, was then adopted.

Mr. Hornblower offered the following, to be inserted as the twenty-sixth section:

"Sec. XXVI. No private or special law shall be passed, authorizing the sale of any lands belonging, in whole or in part, to a minor or minors, or other persons; but the legislature may, by law, authorize the court of chancery to order such sales to be made, upon an application to that court, by petition or otherwise."

[G]Mr. Parker [had] moved to insert after the word minors, the words or other persons; which Mr. H. accepted.

[J]Mr. Ten Eyck moved to postpone the further consideration of the same [in order that it might be] [A]printed, as it was an important and desirable provision, requiring great consideration.

Mr. Randolph wished to inquire if some provision should not be made with reference to making partitions of real estate.

Mr. Hornblower said the laws provided abundantly for that, as they existed.

Mr. Stokes said he would rather trust the Representatives of the people than one man, in such matters, and he moved to postpone *indefinitely*.

[G]Mr. Parker said that this was equivalent to a motion to reject, and opened the whole subject. [A]He hoped this would not prevail, and argued strongly in favor of the provision offered by Mr. Hornblower and was willing to go so far as to prevent the passage of laws for the sale of all real estate belonging in any party, whether competent or incompetent, of minors, married women, absentees or others. [G]He was proceeding to discuss the whole subject, when the chair, [J]Mr. Wurts, v.p., [G]called him to order, and said that the motions to postpone indefinitely, and to postpone simply, were the same, and did not open the merits of the subject. From this decision Mr. Parker appealed, and argued the point. Mr. Hornblower sustained the appeal.

[J]And on the question, shall the decision of the chair be sustained? it was decided in the affirmative.

The motion to postpone the further consideration of the section,

was then disagreed to, [A]ayes 14, noes 24.

Mr. Ogden was in favor of the principle sought to be established, and thought it the duty of the Convention to throw around the property of our citizens all the guards they could. It would be also a great saving of expense, and would withhold the temptation to persons approaching the Legislature improperly to obtain sales of lands.

Mr. Mickle called for the previous question which was sustained, and Mr. Child called for a division of the question.

The question was then taken on the 1st clause providing that no private or special law should be passed for the sale of lands of minors or other persons.

Yeas. Allen, Bell, Browning, Childs, Edsall, Elmer, Ewing, Field, Gilchrist, Green, Halsted, Hornblower, Jaques, R. S. Kennedy, Mickle, Naar, Neighbour, Ogden, Parker, Pitney, Randolph, Ryerson, Stratton, Swain, Vanarsdale, Vroom—26.

Nays. Condit, Dickerson, Fort, Hibbler, P. B. Kennedy, Laird, Lambert, Pickel, Stokes, J. R. Thomson, Wills, Wurts, Zabriskie—13.

The chair decided that it had not been agreed to.

Mr. Condit said he had voted against this for want of time for consideration, and he hoped a postponement might have been had, and Mr. Hornblower moved to postpone it to Monday.

Mr. Randolph suggested that this motion ought not to have been divided, and he cited from the manual to sustain his position.

The Convention agreed to take the question again on the whole section, without a division.

[J]And on the question, shall the section be adopted, as the twenty-sixth section of the report now under consideration?

Pending the same,

On motion of Mr. Parker,

The convention adjourned to this afternoon, at three o'clock

[J]At three o'clock the convention met, pursuant to adjournment.

The convention proceeded to the consideration of the unfinished business of the morning; being the report of the Committee on the Legislative Department, as amended in committee of the whole.

The question being on the adoption of the section proposed to be inserted as the twenty-sixth, [A]Mr. Hornblower asked if it would not be unkind to force a vote under the previous question, on a proposition of such vast importance.

Mr. Stratton suggested a reconsideration of the vote on the question "shall the main question be now put?"

[J]Mr. Ryerson moved to reconsider the vote by which the main question was ordered to be put;

Which motion was agreed to.

The question then being, shall the main question be now put? it was determined in the negative.

The further consideration of the proposed section was then postponed.

The twenty-sixth section being under consideration, the same was agreed to, without amendment.

The twenty-seventh section being under consideration, the amendments made in committee of the whole were agreed to.

The section, as amended, was then adopted.

The twenty-eighth section being under consideration, the amendment made in committee of the whole was agreed to.

Mr. Ryerson moved to amend the same section, by substituting therefor the following:

"The fund for the support of free schools, and all money, stock, and other property which may hereafter be appropriated for that purpose, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public schools, for the benefit of all the people throughout the state; and it shall not be competent for the legislature to borrow, appropriate, or use the same, or any part thereof, for any other purpose, under any pretence whatever."

Mr. Gilchrist moved to amend the substitute, by inserting, between the words "purpose" and "shall", the following: "or received into the treasury under the provisions of any law heretofore passed to augment said fund"; [A]which was accepted by Mr. Field, as chairman of the Committee, who reported the substitute, and which was agreed to by the Convention.

Mr. Hornblower said he desired not to make any discussion but he wished to introduce a provision that no part of the fund should be appropriated to any sectarian school or that any sectarian school should be deemed a common school, and without that provision he could not vote for it. He called up that amendment heretofore offered to that end.

Mr. Wills hoped it would not prevail, and Mr. Lambert expressed the same wishes, as it would operate unjustly.

Mr. Hornblower said we must either let this money be distributed among all congregations, or conflict with a law now existing in favor of a large and highly respectable class of the community, the Friends. We have now he believed, ten Catholic schools, and the Catholics would not allow their children to go to a Protestant school. We have also Presbyterian schools [G]which may claim a share of this fund [A]and Episcopal schools, and schools of other denominations, and what would be the consequence? Instead of this fund going to support the public schools, it would be distributed among the various Christian and anti-Christian denominations. [G]What then are we to do? Socinians will have their schools; Infidels theirs. Is the fund to be divided among all these?

I am a patron of a Presbyterian school, but I don't want any share of the school fund for that school. I want to keep our common schools open to all; but I wish that we should not involve ourselves in certain difficulty in future times. I don't want to deny to the Friends or the Catholics their share of the fund; but sometimes a part of the community which pays very little tax, will have large schools, and will wish to draw a large amount from the school fund. Now this will produce difficulties in future times, and therefore, I wished to leave the whole matter in the hands of the legislature.

[A]Mr. Ewing opposed the amendment, and thought it would be destructive of some of the best schools in the State.

Mr. Field could not see the difficulty which seemed to press on Mr. Hornblower. There were some excellent schools sustained by the Friends in Burlington, and he did not see why they should be debarred from a portion of the fund. There was no compulsion to send children to sectarian schools. He was not sure that the Catholics were not right on principle. If a Catholic declined to send his child to a Protestant school, was it right that he should derive no benefit from the fund at all? He was willing to leave the matter to the Legislature.

Mr. Hornblower said he only offered the amendment in anticipation of the difficulties which might ensue, but as he saw so much opposition in the Convention, he withdrew it.

Mr. Pickel asked, whether under this section if adopted, the State would not be required to repay the debt now due to the school fund of $100,000.

Mr. Field said the section could not, he conceived, bear such a construction.

Mr. Condit saw no difficulty at all even if the State could be called on to pay the debt. They owned stock of the Camden & Amboy Rail Road Co. doubly sufficient to meet it, and they could pay it without

any inconvenience.

Mr. Child took the same views, and the substitute was agreed to in place of the 28th section, and [G]on motion of Mr. Ryerson, [A]the final action was postponed until Monday in order to call the ayes and noes on it.

[J]The twenty-ninth section being under consideration, the amendment, made in committee of the whole, by striking out the same, was agreed to, and the section ordered to be stricken out.

The thirtieth section being under consideration the amendment, made in committee of the whole, striking out the same, was agreed to, and the section ordered to be stricken out. [A]The further consideration of the report was postponed, there being three sections still undecided, and the report, so far as agreed on, was referred to the committee on revision.

[J]On motion of Mr. Fort,

The convention proceeded to the consideration of so much of the report of the Committee on Subjects not referred to other committees, with the amendments made to the same in committee of the whole, as had been heretofore postponed.

The "Schedule" of the same being under consideration,

[A]Section 1.—Mr. Vanarsdale suggested that there should be some provision for criminal indictments pending, or for the punishment of offences prior to the organization of the Judiciary under the Constitution.

Mr. Vroom thought it unnecessary.

Mr. Ryerson suggested to amend by inserting "remedies for public wrongs."

Mr. Condit thought that the first part of the section covered all cases which might arise.

After several other suggestions had been made but not acted on, [J]the amendments, made in committee of the whole, to the first paragraph, were agreed to, and the same, as amended was adopted.

The amendment, made in committee of the whole, to the second paragraph was agreed to.

Mr. Ogden moved to amend the same, by striking out the words "of their respective offices or appointments", and insert "thereof";

Which motion was agreed to.

Mr. Gilchrist moved to amend the same, by striking out the words "unless by this constitution it is otherwise provided," and inserting "as if no change had taken place";

Which motion was disagreed to.

The paragraph, as amended, was then adopted.

[A]Section 3d—Mr. Fort moved to strike out the words "keeper and inspector of the State Prison." Agreed to.

[J]The third paragraph was amended, so as to read as follows:

"3. The present governor, chancellor, and ordinary, and treasurer of this state shall continue in office until successors, elected or appointed under this constitution, shall be sworn or affirmed into office."

And the same, as amended, was agreed to.

The fourth paragraph was agreed to, without amendment.

Mr. Ryerson moved to amend the fifth paragraph, by inserting, after vacancies, the words "in office"; and also by inserting, after "appointed", the words "or elected";

Which motion was agreed to.

Mr. Fort offered the following, and moved to insert it, as a substitute for the fifth paragraph:

"It shall be the duty of the governor to fill all vacancies in office, by granting commissions which shall not extend beyond the end of the next session of the Senate, or the election or appointment of a successor."

[A]Mr. Green suggested that the section had better be struck out and transferred to the Executive Department, where it could be acted on and where it was more appropriate.

Mr. Fort refused to withdraw the substitute, but consented to postpone it.

[J]On motion of Mr. Vroom, it was

Ordered, that the fifth paragraph, and substitute offered therefor, be referred to the Committee on the Executive Department.

Mr. Ryerson moved to insert the following, as the fifth paragraph:

"5. The present governor of this state, or in case of his death or inability to act, then the vice president of Council, together with the present members of the Legislative Council and secretary of state, shall constitute a board of state canvassers, in the manner now provided by law for the purpose of ascertaining and declaring the result of the first election for governor, members of the House of Representatives, and electors of president and vice president";

Which motion was agreed to.

Mr. Ryerson moved to insert the following, as the sixth paragraph, [A]the one proposed by Mr. Parker when the Executive report was under consideration, viz.:

[J]"6. The returns of the votes for governor, at the first election under this constitution, shall be transmitted to the secretary of state,

in the manner now prescribed by law, and shall be counted, and the election declared, in the manner now prescribed by law in the case of election of electors of president and vice president";

Which was agreed to.

Mr. Ryerson moved to amend the sixth paragraph, by inserting, after the first word, "the" the word "first"; after "surrogates", the words "of counties"; and before "which", the words "the result of";

Which motion was agreed to.

The paragraph, as amended, was then adopted, and ordered to stand as the seventh.

The amendment made to the seventh paragraph, in committee of the whole, was agreed to, and the same, as amended, was adopted and ordered to stand as the eighth.

On motion of Mr. Brown, it was

Ordered, That when this convention adjourns, it will adjourn to meet on Monday afternoon, at three o'clock.

Mr. Ogden moved to amend the ninth paragraph, by striking out "general" and adding the letter "s" to "election";

Which motion was agreed to.

The paragraph, as amended, was then adopted, and ordered to stand as the tenth.

The tenth paragraph was agreed to, without amendment, and ordered to stand as the eleventh.

The amendments made, in committee of the whole, to the eleventh paragraph were agreed to, and the same, as amended, was adopted as the twelfth.

The amendment made to the twelfth paragraph, in committee of the whole, by striking out the same, was agreed to.

The "Provisional Articles" being under consideration,

The amendment made, in committee of the whole, to the first paragraph, to add the words "until otherwise provided by law", was agreed to.

Mr. Vanarsdale moved to amend the first paragraph, by striking out the word "his", before "accounts", and inserting "said";

Which motion was agreed to.

The first paragraph, as amended, was then adopted.

The amendment made, in committee of the whole, to the second paragraph, to strike out the same, being under consideration, on motion of Mr. Pickel, it was

Ordered, That the same be postponed until Monday next.

[A]Mr. Halsted offered an additional section providing "that all debts

contracted and engagements entered into by authority of this State before the adoption of this Constitution shall be as valid and binding as if this Constitution had not been adopted." No action was taken on this.

[J]On motion of Mr. Vroom, it was

Ordered, That the vote by which the first paragraph of the "Schedule" was adopted be reconsidered.

The convention adjourned till Monday afternoon, at three o'clock.

[J]MONDAY AFTERNOON, 24th June.

At three o'clock the Convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Kidder.

The vice president presented a communication, addressed to the president, from James Carnahan, president of the College of New Jersey, inviting the members of the convention to attend the ensuing commencement of that institution [G]on Wednesday;

[J]Which was read, and

On motion of Mr. Field, was ordered to lie on the table.

Mr. R. S. Kennedy presented a letter from M. P. Van Loan, proposing to take a Daguerreotype sketch of the members of the convention, after the manner of that of the signers of the Declaration of Independence;

Which was read, and

On motion of Mr. Pickel, was ordered to lie on the table.

Mr. Pitney, from the Committee on the Executive Department, to which had been referred the fifth paragraph of the "Schedule" of the report of the Committee on Subjects not referred to other committees, made the following report:

"When a vacancy happens in any office which is to be filled by the governor and Senate, or by the legislature in joint-meeting, the governor shall fill such vacancy, and grant commissions to expire at the end of the next session of the legislature: when a vacancy happens in the offices of clerks or surrogates of counties, the governor shall fill such vacancy, and grant commissions to expire when a successor is duly

elected and qualified into office." [A]The above to be inserted in the Executive Report. Also, a Section to be inserted in the Schedule:

[J]"It shall be the duty of the governor to fill all vacancies in office happening between the adoption of this constitution and the first session of the Senate, and not otherwise provided for, and grant commissions to expire at the end of the first session of the Senate."

On motion of Mr. Ryerson,

The convention proceeded to the consideration of the report.

Mr. Ryerson moved to amend the first section of the same, by inserting, after the word "happens", the words "during the recess of the legislature";

Which motion was agreed to.

Mr. Randolph moved to amend the same section, by inserting, after the word "legislature", the words "unless a successor shall be sooner appointed";

Which motion was agreed to.

The section, as amended, was then adopted, and,

On motion of Mr. Ryerson, was

Ordered to be referred to the committee appointed to arrange and unite the several reports.

The second section being under consideration,

Mr. Ryerson moved to amend, by adding thereto the following: "or when a successor shall be elected or appointed under this constitution and qualified into office";

Which motion was agreed to.

The section, as amended, was then adopted, and referred to the committee appointed to arrange and unite the several reports.

On motion of Mr. Pickel,

The convention then proceeded to the consideration of so much of the report of the Committee on the Legislative Department as had heretofore been reconsidered and postponed.

The twentieth section being under consideration,

Mr. Vroom offered the following, as a substitute therefor:

"Sec. XX. The assent of two-thirds of the members elected to each house shall be requisite to the passage of every law appropriating public money or property to local or private purposes, or granting special rights or privileges, or creating private corporations, other than those for religious, literary, or charitable purposes, or for works of public improvement."

[A]He said there had been some difficulties in the minds of members upon the Section as it stood. One was the feature which required two-

thirds to charter these monied institutions.—There were some too, who though not unfavorable to this feature, were unwilling to extend it to renewals. He said that all had the same object in view, but if it was thought necessary only to keep these institutions under the control of the Legislature at all times, instead of placing the guards and checks upon the *creation* of them, although he would submit.

Mr. Ogden moved to strike out all after the word "purposes" in Mr. Vroom's amendment with a view of offering the following:

"In creating or renewing charters from banks or other private corporations, except those for literary, charitable or religious purposes; or for works of public improvement, the charter shall be limited to 20 years, and may be repealed whenever the public interest requires it—and the warrant shall contain the clause of repeal, or else be inoperative."

Mr. Pickel opposed it as of no avail.

Mr. Green concurred entirely with the gentleman from Somerset. He contended that the repealing clause was of no use. He said it was never introduced until 1824-5. Then several Bank charters (6 or 8) were granted with an aggregate capital of $1,225,000, and all containing this clause, except that of the People's Bank of Paterson, and every one of them failed except that. He hoped Mr. Vroom's amendment would be adopted.

Mr. Elmer concurred.

[G]Mr. Condit advocated the original section. He thought it proper to require the assent of two-thirds to the renewing of charters. If the companies had conducted themselves properly they could get a two thirds vote for the renewal of their charters; if not, there ought to be an obstacle to the renewal.

Mr. Allen opposed the two-thirds principle. [A]He referred to the North River Bank and others in New York the charters of which had expired, and although a majority were willing to renew them, the two-thirds which was required were not, and they were compelled to come in under the General Banking Laws. [G]No bank, however well conducted, had ever obtained a renewal. In seasons of speculation, when a combined influence from various parts of the state is brought to bear upon the legislature, this two thirds obstacle might easily be overcome. But at other times, when a single application is made to the legislature, its single influence will never command a two thirds vote. Thus this guard will fail when it is most needed, and will be insurmountable when it is unnecessary.

Mr. Hornblower said he would sooner vote for the original section

than for Mr. Vroom's substitute, because that made a distinction in favor of old charters and in effect gave them a monopoly.

[A]Mr. Field wished to give a reason for his vote. He should vote against requiring two-thirds to charter these Institutions because there is no principle on which such a proposition can be maintained. He could not understand why we should say that the Legislature may pass laws, but that a *majority* shall not. He could understand why we should prevent the legislature from granting divorces, because that was a subject, over which the Legislature ought to have no jurisdiction, and so, why, we should prevent Lotteries, because that is a gambling and demoralising business, but he contended that it was against principles of a republican government, to allow a minority to control a majority. He said that he knew very well that the Constitution of N. York (and of N. York only,) contained this feature, but it was there introduced against the solemn protestations and loud warnings of their best men. And did it put these institutions down? No. The rage for them being dammed up in one direction broke out with renewed rage in another, and with a ten-fold pernicious effect.

Mr. F. contended that the only safeguard that was necessary was an enlightened public opinion. The amendment of the gentleman from Passaic, he thought would do no possible good, and he should therefore vote against all.

[C]Mr. Vroom replied. There ought to be some guard against indiscreet legislation of this kind. Experience had shown that unless restrained it will run into dangerous excess. [A]He denied that it was right to put these special privileges on the same ground with other legislation. He said that our public laws can be repealed if they are found not to work well, while these cannot because they are held to be a contract. [C]If however, the convention should disapprove of the two thirds principle, he would submit and content himself with the provision reserving the right of the legislature to repeal these charters, [A]because that would be some safety, although in nine cases out of ten it would come too late.

Mr. Brown differed with his friend from Mercer. He held that no principle would be violated by adopting the two-thirds provision, because we are sent here by the people to determine what checks shall be thrown upon legislation, and if that was thought *expedient* by the Convention, he should cheerfully yield.

But he was opposed to giving the Legislature the mere arbitrary, unregulated power of repeal. He held that was a judicial power and should be only exercised between parties, who had both been heard. He asked gentlemen if they did not recollect the time when [illegible] Bank

charters would have been repealed if the Legislature had possessed the power? He was willing that the Legislature should pass the most stringent laws concerning them, but that it should not possess the mere arbitrary power to repeal them capriciously. [C]It would result either in the inconsiderate, arbitrary, tyrannical exercise of the power, or in reducing the legislature to the necessity of sitting as a judicial tribunal, to investigate the conduct of chartered companies.

[A]Mr. R. S. Kennedy concurred with the gentleman from Mercer (Mr. Field). He said that in his county, manufacturing Companies might be, and a Bank was now wanted, and they did not want to have to open a harder door than others had. [C]He was opposed to all these projects—they were the remains, the dregs of a political prejudice and he was opposed to incorporating them in the constitution.

[A]Mr. Naar replied to Mr. Field. He contended that the right of emitting money was a sovereign power, and that it would be perfectly proper for us to say that two-thirds, or any other vote which we think necessary, should be required to grant this power. [C]For on general grounds, the legislature had no right to grant these privileges. Mr. N. also replied to Mr. Kennedy.

Mr. Pickel moved the previous question; [J]there was a second;

And on the question, shall the main question be now put? it was decided in the affirmative, [C]23 to 19.

[J]The question being on agreeing to [Ogden's] amendment to [Vroom's] substitute, the yeas and nays were demanded, and

It was determined in the negative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Browning, Child, Condit, Dickerson, Field, Halsted, Hornblower, R. S. Kennedy, Marsh, Ogden, Parsons, Randolph, Schenck, Spencer, Stites, Stratton, Swain, Ten Eyck, Vanarsdale, Westervelt, Wood—23.

Nays. Mr. Cassedy, Connolly, Edsall, Elmer, Ewing, Fort, Gilchrist, Green, Haight, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Parker, Pickel, Pitney, Ryerson, Stokes, J. R. Thomson, R. P. Thompson, Vroom, Wills, Wurts (v.p.), Zabriskie—28.

The question then recurring on agreeing to [Vroom's] substitute, the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Cassedy, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Green, Haight, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Marsh, Mickle, Neighbour, Parker, Pitney, Randolph, Spencer, Stokes, Swain, J. R. Thomson, R. P. Thompson, Vanarsdale, Vroom, Wills,

Wurts (v.p.)—29.

Nays. Mr. Allen, Bell, Brown, Browning, Child, Condit, Field, Gilchrist, Halsted, Hornblower, R. S. Kennedy, Naar, Ogden, Parsons, Pickel, Schenck, Stites, Stratton, Ten Eyck, Westervelt, Wood, Zabriskie—22.

[A](Mr. Zabriskie stating that he voted against it because it allowed a *majority* to renew these charters, to which he was opposed.)

[F]The vice president having decided that the substitute was not agreed to, it not having received the votes of the majority of all the members elected to the convention,

Mr. Parker appealed from this decision; [G]and Messrs. Vroom, Stratton and Hornblower supported the appeal. Mr. R. S. Kennedy opposed it.

[A]Mr. Vroom thought the vote which had been taken was the same as that upon an amendment. A majority only was necessary, but a *majority of the whole number* was necessary upon the final vote on adopting it, which should now be taken.

The V. P. (Mr. Wurts) contended that it was different from an amendment, and that after it had been agreed to, no final vote was necessary on adopting it.

[J]And on the question, shall the decision of the chair be sustained? it was determined in the affirmative, [G]27 to 8.

[F]The question then being on agreeing to the substitute, made in committee of the whole, as amended,

Pending the same,

Mr. Zabriskie moved a call of the convention;

Which was ordered, [G]27 to 9.

The House was called and 51 members answered [all but Brick, Brown, Clark, Green, Hibbler, Sickler, Williamson].

[J]On motion of Mr. R. P. Thompson,

The further proceedings in the call were then dispensed with.

The yeas and nays being called on agreeing to the substitute of the committee of the whole, as amended,

[A]The section then as formerly amended was agreed to as follows:

Yeas. Cassedy, Condit, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Gilchrist, Green, Haight, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Pickel, Pitney, Ryerson, Sickler, Stokes, J. R. Thomson, Vanarsdale, Vroom, Wills, Wurts (v.p.), Zabriskie—30.

Nays. Allen, Bell, Browning, Cattell, Child, Field, Halsted, Hornblower, R. S. Kennedy, Marsh, Ogden, Parker, Parsons, Randolph, Schenck, Spencer, Stites, Stratton, Swain, Ten Eyck, R. P. Thompson, Westervelt, Wood—23.

After some little excitement,

Mr. Ryerson said he had voted under a misapprehension as to what the section contained, and asked to change his vote.

Mr. Ewing said that would change the result, as the section had now been agreed to.

Leave was granted, so

[J]It was decided in the negative, [G]29 to 24—not a majority. [Everyone voted the same except Ryerson.]

[F]The twenty-first section being under consideration,

And the question being on agreeing to the amendment made in committee of the whole, by adding the following: "and all such charters may be altered, modified, or repealed by the legislature, whenever in their opinion the public good may require it; and every such charter shall contain a clause to that effect, or be inoperative";

And the yeas and nays being demanded,

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Cassedy, Connolly, Dickerson, Edsall, Elmer, Fort, Haight, Holmes, Jaques, P. B. Kennedy, Lambert, Mickle, Naar, Neighbour, Ogden, Pickel, Pitney, Ryerson, Sickler, Stites, Stokes, Stratton, J. R. Thomson, R. P. Thompson, Vroom, Wills, Wurts (v.p.), Zabriskie—28.

Nays. Mr. Allen, Bell, Brown, Browning, Cattell, Condit, Ewing, Field, Gilchrist, Green, Halsted, Hornblower, R. S. Kennedy, Laird, Marsh, Parsons, Randolph, Schenck, Spencer, Swain, Ten Eyck, Vanarsdale, Westervelt, Wood—24.

The same section being still under consideration,

Mr. Zabriskie moved to amend the same [G](which related to banks) by inserting a clause providing that a two thirds vote [J]of the members elected to each house [G]should be necessary in granting and renewing such charters.

Mr. Naar moved to extend the section to all charters for special privileges.—(withdrawn).

Mr. Child offered a substitute for the whole section, which was read for information.

[J]And on [Zabriskie's] amendment the yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Cassedy, Condit, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Green, Haight, Holmes, Jaques, P. B. Kennedy, Laird,

Mickle, Naar, Neighbour, Parker, Pickel, Pitney, Ryerson, Stokes, J. R. Thomson, Vanarsdale, Vroom, Wills, Wurts (v.p.), Zabriskie —28.

Nays. Mr. Allen, Bell, Brown, Browning, Cattell, Child, Field, Gilchrist, Halsted, Hornblower, R. S. Kennedy, Lambert, Marsh, Ogden, Parsons, Randolph, Schenck, Sickler, Spencer, Stites, Stratton, Swain, Ten Eyck, R. P. Thompson, Westervelt, Wood—26.

[G]Mr. Child's substitute was then read.

Mr. Browning objected to this substitute as out of order. The chair pronounced it out of order.

Mr. Child modified his substitute [and] [J]moved to amend, by inserting the following, as a substitute:

"The assent of three-fifths of the members elected to each house shall be requisite to the passage of every law for granting, continuing, altering, amending, or renewing charters for banks or money corporations; and all such charters shall be limited to a term not exceeding twenty years, and shall contain a clause, giving to the legislature the power, by a vote of three-fifths of the members elected to each house, to alter, modify, or repeal the same, whenever in their opinion the public good may require it; and without such clause, every such charter, or a renewal of the same, shall be inoperative."

Mr. Hornblower moved to amend the substitute, by striking out "twenty", before the word "years" and inserting "fifteen." [A]He thought that the greatest safeguard in these institutions would be to limit their charters to a shorter period. Not agreed to.

[J]Mr. Hornblower moved to amend the substitute by striking out all after the words "twenty years";

And on this amendment, the yeas and nays were demanded, and,

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brown, Browning, Cattell, Condit, Field, Gilchrist, Green, Halsted, Hornblower, P. B. Kennedy, R. S. Kennedy, Marsh, Parker, Pitney, Randolph, Schenck, Spencer, Stites, Ten Eyck, Vanarsdale, Westervelt, Wood—24.

Nays. Mr. Cassedy, Child, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Haight, Holmes, Jaques, Lambert, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Ryerson, Sickler, Stokes, Stratton, Swain, Vroom, Wills, Wurts (v.p.), Zabriskie—27.

The question then being on agreeing to [Child's] substitute,

The yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Cassedy, Child, Dickerson, Edsall, Fort, Green, Haight, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Pickel, Pitney, Ryerson, Stokes, Vanarsdale, Vroom, Wills, Wurts (v.p.), Zabriskie—24.

Nays. Mr. Allen, Bell, Brown, Browning, Cattell, Condit, Connolly, Elmer, Ewing, Gilchrist, Halsted, Hornblower, R. S. Kennedy, Marsh, Ogden, Parker, Parsons, Randolph, Schenck, Sickler, Spencer, Stites, Stratton, Swain, Ten Eyck, Wood—26.

The same section being still under consideration,

[G]Mr. Pickel rose to speak—

Mr. R. S. Kennedy moved the previous question.

The Chair. The gentleman from Warren is out of order. He can not move the previous question while a member is on the floor.

Mr. R. S. Kennedy said it was in order last winter [in the legislature], and the gentleman from Hunterdon [Pickel] had moved it himself [A]and advocated it.

[G]The Chair. The gentleman from Warren is out of order.

Mr. Pickel contended that [A]the gentleman had better hold on a little while! [G]It was very improper to force a final vote on this important question, at this late hour when the House was thin. He moved to postpone, [A]as we evidently could not act harmoniously now.

[G]Mr. Green advocated the motion to postpone. He was very anxious that there should be incorporated in the constitution, some clause of this kind. [A]He said it was entirely necessary that something should be done to prevent the continued increase of these monied corporations. [G]The people of New Jersey, the poor of New Jersey have been plundered of thousands and tens of thousands by these moneyed corporations. Some check upon this legislation is demanded. We all profess that we desire it. And yet in consequence of trivial differences between us, we are likely to disagree to every section. [A]He hoped the section would be postponed, in order that an effort might be made this evening, or in the morning to draw a section which would be more acceptable to all.

[G]A motion was here made to adjourn—by whom the Reporter in the confusion could not hear [R. S. Kennedy, according to the Advertiser]. It was agreed to, 18 to 12.

[J]The convention adjourned till to-morrow morning, at nine o'clock.

[A]The whole proceedings of the afternoon have been marked by considerable excitement and feeling—and the subject seems involved in great difficulty. The session has been *four hours* in length.

[J]TUESDAY MORNING, 25th June.

At nine o'clock the convention met, pursuant to adjournment.

Mr. Child offered the following:

Resolved, That it is expedient to require more than a majority of the members elected to each house to grant charters for banks or money corporations.

[G]Mr. C. said if we could ascertain what was the sense of the convention in this matter, it would expedite our business.

[A]Mr. Ryerson moved to lay it on the table—carried, ayes 20, noes 14.

Mr. R. S. Kennedy called up a communication from Mr. D. Van Loan Daguerreotypist inviting the members to have the Convention taken as a body after the manner of the Declaration of Independence and he moved to meet at half past 2 o'clock for that purpose—agreed to.

[J]On motion of Mr. Ryerson,

The convention proceeded to the consideration of the unfinished business of yesterday afternoon, being so much of the report of the Committee on the Legislative Department as had heretofore been postponed.

The twenty-first section being still under consideration,

Mr. Brown moved to reconsider the vote by which the substitute offered for the same was disagreed to. [G]If it should be reconsidered he would move to strike out the repealing clause. He did not know that he would vote for the proposition, but he wished to get rid of the repealing clause now in the section in the report.

[A]Mr. Zabriskie opposed the motion to reconsider but on the suggestion that it should be taken as a test vote he was willing to reconsider.

Mr. Child said he was convinced that if the repealing clause was struck out, it would pass by a large majority.

Mr. Condit did not see any reason for adhering to this clause as the Legislature would have power to put that in every charter.

Mr. Hornblower was willing to enter into any reasonable compromise. He was opposed to the repealing clause, and considered it absurd and unnecessary.

Mr. Ewing was opposed to reconsideration, and also to the repealing clause, but he was strongly in favor of the two-third principle, as it would tend to prevent the ruinous and destructive measures which in years past, had so injured the State, causing such vast losses to the

people. He instanced the cases occurring from 1819 to 1830, by which great losses had been experienced, and he insisted strongly that this protective provision should be adopted.

[J]And on this motion the yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz*:

Yeas. Mr. Bell, Brown, Cassedy, Cattell, Child, Clark, Dickerson, Edsall, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, P. B. Kennedy, Lambert, Marsh, Naar, Neighbour, Ogden, Parker, Pickel, Randolph, Spencer, Stratton, Ten Eyck, Vanarsdale, Vroom, Wills, Wurts (v.p.)—30.

Nays. Mr. Allen, Brick, Browning, Condit, Connolly, Elmer, Ewing, Fort, Jaques, R. S. Kennedy, Laird, Mickle, Parsons, Pitney, Ryerson, Schenck, Sickler, Stites, Stokes, Swain, Westervelt, Wood, Zabriskie—23.

[G]Mr. Brown then moved to strike the repealing clause out.

[J]Mr. Child, by whom the substitute under consideration was offered, amended the same, by striking out all after the words "twenty years".

Mr. Green moved to amend the substitute, by striking out all after "assent" and inserting the following: "of two-thirds of the members elected to each house shall be requisite to the passage of every law appropriating public money to private purposes, or granting special rights or privileges, or for creating, altering, or modifying charters for banks or money corporations; and all charters for banks or money corporations shall be limited to a term not exceeding twenty years."

[A]Mr. Hornblower said he should oppose the two-thirds principle as often as it was brought up.

Mr. Child insisted that the substitute was not in order, but the chair decided it to be in order.

[G]Mr. Sickler and Ewing asked for the previous question, and it was ordered.

And on the question of agreeing to the amendment to the substitute,

The yeas and nays were demanded, and

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Cassedy, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Mickle, Naar, Neighbour, Pickel, Pitney, Sickler, Stokes, Swain, J. R. Thomson, Vroom, Wurts (v.p.), Zabriskie—26.

Nays. Mr. Allen, Bell, Brick, Brown, Browning, Cattell, Child, Clark, Condit, Field, Gilchrist, Halsted, Hornblower, R. S. Kennedy, Lambert, Marsh, Ogden, Parsons, Randolph, Ryerson, Schenck, Spencer, Stites, Stratton, Ten Eyck, Vanarsdale, Westervelt, Wills,

Wood—29.

The question then being on agreeing to [Child's] substitute, as amended,

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Cassedy, Cattell, Child, Clark, Condit, Dickerson, Edsall, Fort, Gilchrist, Green, Haight, Holmes, Hornblower, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Randolph, Ryerson, Sickler, Stites, Stokes, Swain, J. R. Thomson, Vanarsdale, Vroom, Westervelt, Wills, Wurts (v.p.), Zabriskie—37.

Nays. Mr. Allen, Bell, Brick, Browning, Connolly, Elmer, Ewing, Field, Halsted, Hibbler, R. S. Kennedy, Marsh, Schenck, Spencer, Stratton, Ten Eyck, Wood—17.

The article, proposed to be inserted as the twenty-sixth section of the "Legislative" report, being under consideration, the same was,

On motion of Mr. Hornblower, by whom it was offered, amended so as to read as follows:

"Sec. XXVI. No private or special law shall be passed authorizing the sale of any lands belonging, in whole or in part, to a minor or minors, or other persons, who may at the time be under any legal disability to act for themselves";

[G]Mr. Ryerson [had] moved to strike out all respecting the chancellor; which Mr. H. accepted.

Mr. Stokes opposed the section as amended.

Mr. Ryerson advocated it, as of the greatest importance.

[J]And the question being on inserting the same, as the twenty-sixth section,

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brick, Brown, Browning, Cassedy, Cattell, Child, Clark, Elmer, Ewing, Field, Gilchrist, Green, Haight, Halsted, Hornblower, Jaques, R. S. Kennedy, Lambert, Naar, Neighbour, Ogden, Parsons, Pitney, Randolph, Ryerson, Sickler, Spencer, Stratton, Swain, Ten Eyck, J. R. Thomson, Vanarsdale, Vroom, Westervelt, Wood, Wurts (v.p.), Zabriskie—39.

Nays. Mr. Connolly, Dickerson, Edsall, Fort, Hibbler, P. B. Kennedy, Laird, Marsh, Mickle, Pickel, Schenck, Stites, Stokes, Wills—14.

The substitute offered for the twenty-eighth section, [G]Mr. Field's section to perpetuate the school fund and the distribution of the interest

thereof, [J]as amended, being under consideration,

[G]Mr. Hornblower explained that he was in favor of free schools and public education but opposed to making this a constitutional provision for fear of future trouble. But in order to prevent his being placed in a false position, he should vote in the affirmative.

[J]Mr. Edsall moved further to amend the same, by inserting, before the word "benefit", the word "equal."

[G]Mr. Field opposed the amendment as likely to embarrass the action of the legislature. [A]For that very reason it had been struck out in Com. of the Whole.

[G]Mr. Edsall advocated it because he wished to prevent [A]all sectarian combinations from interfering to divert the true intention of the fund.

Mr. Sickler [Mickle, according to the Advertiser] moved the previous question and it was ordered.

[J]And on the question, shall the amendment be agreed to? the yeas and nays were demanded, and

It was determined in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brick, Cassedy, Child, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Green, Haight, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Pickel, Pitney, Ryerson, Sickler, Spencer, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, Vanarsdale, Vroom, Westervelt, Wills, Wurts (v.p.), Zabriskie—39.

Nays. Mr. Browning, Clark, Condit, Field, Gilchrist, Halsted, R. S. Kennedy, Ogden, Parsons, Schenck, Stites—11.

The question then being on agreeing to the substitute, as amended,

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Bell, Brick, Browning, Cassedy, Cattell, Child, Clark, Condit, Connolly, Dickerson, Edsall, Elmer, Ewing, Field, Fort, Gilchrist, Haight, Halsted, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Marsh, Naar, Neighbour, Ogden, Parsons, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Swain, J. R. Thomson, Vanarsdale, Vroom, Westervelt, Wills, Zabriskie—47.

Nays. Mr. Allen, Brown, Green, Mickle, Pickel, Ten Eyck, Wurts (v.p.)—7.

Mr. Connolly offered the following, to be inserted as an additional section:

"The legislature may, at any time, vest in circuit courts or courts of common pleas, within the several counties of this state, the exercise

of chancery powers, so far as relates to the foreclosure of mortgages."

[G]Mr. Sickler moved the previous question, and it was ordered.

[J]The question then being on agreeing to the adoption of the additional section,

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Bell, Cassedy, Cattell, Child, Condit, Connolly, Dickerson, Edsall, Fort, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Marsh, Mickle, Naar, Neighbour, Parsons, Pickel, Pitney, Spencer, Stokes, Stratton, Swain, J. R. Thomson, Wills, Wurts (v.p.), Zabriskie—31.

Nays. Mr. Allen, Brick, Brown, Browning, Clark, Elmer, Ewing, Field, Gilchrist, Green, Halsted, Hornblower, R. S. Kennedy, Ogden, Randolph, Ryerson, Schenck, Sickler, Stites, Ten Eyck, Vanarsdale, Vroom, Westervelt, Wood—24.

Mr. Cassedy offered the following, to be inserted as an additional section:

"Individuals or private corporations shall not be authorized to take private property, without just compensation first made to the owners."

[A]Mr. Child said that this had already been fully discussed and negatived in Com. of the Whole.

Mr. Vroom said this was intended to provide against the difficulty which had been urged before, that public improvements might be delayed if this was adopted. This section intended only to prevent individuals or private corporations from taking a man's property for public use without just compensation *first* being made. This distinction between public exigency and necessity and between the works of private corporations was carried out by this provision which was deemed necessary.

Mr. Child opposed it, and urged the same reasons as heretofore, viz: that works of great improvement might be delayed by the obstinacy of one man. [Mr.] [G]Halsted [also] opposed it.

[A]Mr. Green said he had voted against the insertion of the word *first* to the other section, but he felt he should be perfectly consistent in voting for this provision. The distinction was broad and necessary and this same provision was adopted in several Constitutions, and he cited a clause in the Constitution of Pennsylvania. Mr. Green also cited the case of the Water Power Co. in Trenton, which as was well known was bankrupt, but he knew of the land of orphans taken for that very work, which was not paid for to this day,—and such cases were within the knowledge of every member with reference to other corporations.

Mr. Allen suggested that the section as it now stood held out the idea that a private person might take another man's property when he chose by paying what he thought proper first. He thought it would be best to insert the words *"under color of law."*

Mr. Browning said he had already given his views at length on this subject, and he now rose to suggest that the mover should strike out the word *private* before corporations, as he saw no reasons why any corporation public or private should take a man's property without paying first for it. He yielded to the suggestions heretofore made, that the exigencies of the State might require land to be taken before compensation could be made, but he saw no reason why cities or boroughs should have the power to take a man's land for the altering or widening or making of a street without first paying for it.

Mr. Cassedy accepted the amendment and withdrew the word *private.*

[J]Mr. Child moved to amend the same by adding "in such manner as the legislature shall direct."

[A]Mr. Randolph regretted that Mr. Cassedy had withdrawn the word, [and] [J]moved to amend the same, by striking out "made" and inserting "paid or secured."

[A]Mr. Cassedy withdrew his acceptance and Mr. Ogden moved as a substitute the section on this subject provided in the Constitution of Pennsylvania, which makes it necessary that a corporation must either first pay, or secure a party before they can take his land. [G](Not in order.)

[A]Mr. Child's amendment was *not agreed to.*

Mr. Hornblower asked who was to determine what was security.

Mr. Randolph said that would be provided for in the charters.

Mr. Naar opposed the insertion of the words "or secure," as it would do away with all the good intended by the section.

Mr. Mickle was opposed to the insertion of the words, "he had a rail road running *through him,* and he had not got the money for his land yet."

Mr. Hornblower offered a substitute that *private corporations* should not take private property for their use without first paying for it.

Mr. Green said, by this substitute a corporation could not be authorized to take a man's property, but John Jacob Astor, or any other man with means at his command, could.

Mr. Mickle [Sickler, according to the Gazette] called the previous question, which was ordered, and Mr. Browning's amendment was

not agreed to—ayes 10, noes not counted.

[G]Mr. Randolph's amendment was disagreed to, without a count.

[J]And on the question, shall [Cassedy's] section be adopted?

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Brick, Brown, Browning, Cassedy, Cattell, Child, Clark, Connolly, Dickerson, Edsall, Elmer, Ewing, Fort, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Pickel, Pitney, Ryerson, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Swain, J. R. Thomson, Vanaradale, Vroom, Westervelt, Wills, Wurts (v.p.), Zabriskie—43.

Nays. Mr. Condit, Field, Gilchrist, Halsted, R. S. Kennedy, Marsh, Parsons, Randolph—8.

On motion of Mr. Sickler, it was

Ordered, That the report of the Committee on the Legislative Department, as amended, be referred to the committee appointed to arrange and unite the several reports.

Mr. Parker offered the following:

Resolved, That the rule authorizing a call for the previous question, the operation of which is to preclude debate on questions before the house, is not applicable to a convention called to deliberate upon and provide a constitution for the people of a free state; inasmuch as it compels members of the convention to vote upon the adoption of principles of the first importance, without an opportunity of hearing the arguments and opinions of their fellow members, or of making known their own, and thus precludes an opportunity of forming a correct opinion.

Resolved, That so much of the rules of this convention as allow the calling of the previous question, be, and the same is hereby rescinded and annulled;

Which was read, and [G]Mr. Parker advocated his motion ably.

[A]Mr. Sickler to whom Mr. Parker adverted as calling the previous question so frequently, called the previous question on the resolution but it was not seconded, and on motion of Mr. Pickel, the resolution was laid on the table.

[J]On motion of Mr. Pickel,

The convention proceeded to the consideration of so much of the report of the Committee on Subjects not referred to other committees, as had been heretofore postponed.

The second paragraph of the "Provisional Articles" being under consideration, the amendment made in committee of the whole, striking out the same, was agreed to.

Mr. Pickel moved to insert the following, as the second paragraph:

"Every taxable inhabitant in this state shall hereafter be taxed according to the value of his property, whether real or personal, to be ascertained in such manner as the legislature shall direct; *provided nevertheless,* the legislature shall have power to tax special privileges, in such manner as they may from time to time direct."

[A]Mr. Pickel advocated this provision, as one of the most important in the whole Constitution, urging that by the present system the great burthen fell upon the agricultural portion of the community.

Mr. Child insisted that this subject belonged more appropriately to the Legislature than any thing that had come before the Convention. Would it not be wise here to fix the rate of interest in the Constitution?—and yet it would in his opinion be equally wise and prudent to adopt such a section as was now proposed. The subject was very fully discussed in Committee of the Whole, and was rejected on the ground of expediency, that it would drive the domestic capital from the State, whereas they needed the aid of its own as well as foreign capital. If the Legislature saw that good would arise by exempting manufactures from taxation, should they not have the power of doing so? He (Mr. Pickel) had only brought this up, and its effect would be, to place members in a false position, and say a silent vote could alone explain the course of gentlemen here, and gentlemen would appear as voting against a principle which they approved. Was it not for the purpose of obtaining political capital? He hoped not, for however much he might even [?] be of obtaining that, he would scorn to obtain it at the expense of honor and honesty.

Mr. Pickel denied that he had any such object in view. It was a great principle which he intended to support, and though members might profess these principles, he wished to see their faith in their works; for without that it was not worth a groat.

Mr. Stokes thought it more properly belonged to the Legislature, as no Constitutional provision could be made to cover all the details necessary to carry out his object. [G]But if it should be adopted, he wished it to be made as broad as possible. [A]He moved a substitute, including the same provisions as offered by Mr. Pickel, with the addition that the Legislature should have power also to tax *salaries, professions and trades.* He said he was desirous that all means of accumulating wealth should be subject to taxation, and he saw no reason why trades and professions or salaries should be exempt, and his object in offering it was to cover as much ground as possible in

a Constitutional provision.

[G]Mr. R. S. Kennedy moved the previous question and it was seconded.

Mr. Pickel moved a call of the House. Not agreed to.

[J]And on the question shall the main question be now put? it was determined in the affirmative.

And on the question shall [Stokes'] amendment be agreed to? the yeas and nays were demanded, and

It was decided in the affirmative, as follows, viz:

Yeas. Mr. Allen, Bell, Cassedy, Condit, Connolly, Field, Fort, Gilchrist, Green, R. S. Kennedy, Laird, Marsh, Ogden, Parsons, Pickel, Ryerson, Spencer, Stokes, Swain, Vanarsdale, Westervelt, Wills, Wood—23.

Nays. Mr. Browning, Child, Clark, Edsall, Elmer, Ewing, Haight, Halsted, Hibbler, Holmes, Jaques, P. B. Kennedy, Mickle, Naar, Neighbour, Pitney, Schenck, Stratton, Ten Eyck, Vroom—20.

The question then being on agreeing to the paragraph, as amended,

The yeas and nays were demanded, and

It was decided in the negative, as follows, viz:

Yeas. Mr. Cassedy, Connolly, Edsall, Fort, Haight, Holmes, Jaques, Lambert, Mickle, Naar, Pickel, Ryerson, Stokes, J. R. Thomson, Westervelt—15.

Nays. Mr. Allen, Bell, Brown, Browning, Child, Clark, Condit, Elmer, Ewing, Field, Gilchrist, Green, Halsted, Hibbler, P. B. Kennedy, R. S. Kennedy, Laird, Marsh, Neighbour, Ogden, Parsons, Pitney, Schenck, Spencer, Stratton, Swain, Ten Eyck, Vanarsdale, Vroom, Wood—30.

The "Schedule" being under consideration,

[A]Mr. Fort moved an additional section that every citizen, entitled to the right of suffrage, and otherwise qualified by this Constitution, should be eligible to any office made eligible by the people. He stated that the design was to cut off the property qualification of the Sheriff.

The Chair decided it out of order, as it had been once before decided.

Mr. Naar moved a provision that the possession of property should not be requisite to the filling of any office in the state, but he withdrew it, as the voice of the Convention was so generally against it.

[J]Mr. Green offered the following:

"The term of office of all persons elected or appointed under this constitution, except when herein otherwise directed, shall commence on the day of the date of their respective commissions; but no commission for any office shall bear date prior to the expiration of the term of the incumbent of said office";

Which was agreed to.

The "Schedule" being still under consideration,

On motion of Mr. Elmer, [G]on behalf of Mr. R. P. Thompson who was absent,

[J]The first paragraph of the same was amended, by inserting, after the word "continue", the following: "and all indictments which shall have been found, or which hereafter may be found, for any crime or offense committed before the adoption of this constitution, may be proceeded upon," [G]as if no such change had taken place.

[J]On motion of Mr. Green,

The second paragraph was amended, by inserting, after "action", the words "rights of action."

The paragraph, as amended, was then agreed to.

On motion of Mr. Clark, the following was ordered to be inserted in the "Schedule":

"The legislature shall pass all laws necessary to carry into effect the provisions of this constitution."

The report of the committee on subjects not referred to other committees was then referred to the committee appointed to arrange and unite the several reports.

On motion of Mr. Ryerson,

The convention proceeded to the consideration of the report of the Committee on Future Amendments to the Constitution, with the amendments made to the same, in committee of the whole.

The first section being under consideration,

[A]On motion of Mr. Ogden all the amendments made in Committee of the Whole were agreed to except two, which were reserved, viz: one for providing for a special election to vote upon any amendment, and the second a provision that no amendment should be submitted to the Legislature more than once in five years.

Mr. Child opposed the insertion of this provision, contending that unless there was some very important amendment to be made, it would be impossible to get anything like a full vote, and upon such occasions the large towns and cities, where the inhabitants are compactly located, could vote without inconvenience, and consequently they would control the action of the whole people. He was of opinion that amendments had better be submitted to the people at the Fall elections, when a greater number of votes would be obtained.

Mr. Browning hoped the amendment would be adopted, as he con-

sidered it essentially necessary that any thing connected with the Constitution should be kept separate from local and national questions, otherwise questions as to the alteration of the fundamental law of the state, would only be of secondary consideration with the people, which he thought ought most carefully to be avoided. [Mr.] [G]Clark [also] advocated the amendment.

[A]Mr. Child then withdrew his motion, and the amendment in Committee of the Whole was agreed to viz: providing that amendments to the Constitution are only to be submitted to the people at a special election.

[G]The amendment providing that no amendment shall be submitted to the people oftener than once in five years, was agreed to. [A]Ayes 26, Nays 17.

[J]The same section being still under consideration,

Mr. Connolly moved to strike out "three months" and insert "six weeks" [as the period during which proposed amendments shall be advertised in a newspaper];

Which motion was disagreed to.

Mr. Brown moved to amend, by striking out, after "legislature", the words "voting thereon." [A]Mr. Brown said that as the section now stood, amendments might be made to the Constitution by a minority of the people, and he was not willing to submit to that. If one thousand persons voted in favor of any amendment, and the rest were silent, the amendment would be made; and this, he insisted was wrong in principle. The same defect existed with reference to the law under which this Convention was assembled. But he trusted this Constitution would not be adopted by a minority vote; if it was, it would be the greatest curse which could be inflicted on the people. Give it once the name of a minority Constitution, and it will have no power—it would be treated with no respect by any. He expressed the intention if his motion prevailed of offering in the afternoon a provision for ascertaining the requisite majority.

[J]Pending the consideration of which amendment,

On motion of Mr. Vanarsdale,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

On motion of Mr. Dickerson, it was

Resolved, That a committee of five be appointed to draft an address,

to be submitted to the people, in connection with the constitution agreed to by this convention.

Messrs. Dickerson, Condit, Ewing, Field, and Browning were appointed said committee.

[G]Mr. Sickler offered the following:

Resolved, That this Convention procure a copy of the daguerreotype picture of the members in group, and file the same in the office of the Secretary of State for the benefit of posterity.

Laid on the table.

[A]Mr. Parker moved to take up the resolution offered by him this morning relating to the rule concerning the Previous Question.—Not agreed to.

[J]The convention then proceeded to the consideration of the unfinished business of the morning, being the report of the Committee on Future Amendments to the Constitution, as amended in committee of the whole.

The first section being under consideration, and the question being on agreeing to the amendment to strike out, after "legislature", the words "voting thereon",

Mr. Hornblower moved to amend the amendment, by inserting, between the words "constitution" and "provided", the following: "provided such majority shall be equal to a majority of the number of votes cast at the last preceding election for governor."

[A]Mr. Brown withdrew his amendment and accepted this.

Mr. Ogden said this subject had already been fully discussed in the Committee of the whole. He said we had been elected here by a mere majority of those voting and our work is to be ratified or rejected by the same vote, and he hoped future amendments might be adopted in the same way.—He thought the method proposed would prevent all future amendments, and he hoped it would not be adopted.

Mr. Child would be willing to go for it, if the amendments were to be submitted at the Legislative election because then the vote of the State will be brought out. But they will not and cannot be at a special election, and he should feel compelled to oppose it.

Mr. Hornblower said that his idea was that no amendments should be adopted unless they were of sufficient importance to call the people out.

Mr. Clark hoped the amendment would be adopted. It was founded upon the principle that the Constitution should not be altered except by *the people*. He contended that if the people did not come out to vote, it would be because they did not wish to vote for the amendment.

Mr. Child was in favor of the principle, but the election should be at the same time with the October election.

Mr. Clark was opposed to that because it would make the question as to amendments, a subordinate one—and he desired that it should be a paramount one.

Mr. Zabriskie concurred with the last idea.—But he said that the people who stay at home cannot be considered as wishing to vote against the amendment. They do not wish to express any opinion at all. They may have already elected the members of the second Legislature with reference to the question—and he did not think it right to compel all those in favor to come out merely to counteract the influence of those who stay at home.—He preferred the article, as it came from the Committee of the Whole.

Mr. Jaques concurred.

Mr. Brown objected to the principle of the gentleman from Passaic that we should only require a majority of those voting, because of the law by which we are here. He said, if that was wrong, by now adopting it, we should only perpetuate that wrong. He would rather have a defective Constitution, which was adopted unanimously, than have the best one in the world if adopted by only a minority. The question is not so much whether the people are satisfied with it, and with their form of government.

He contended that in a case of this kind it was right and necessary that the majority should show affirmatively they are in favor of it. In our Legislature we require a majority of the whole number, and all require at least a majority of a quorum, but by this report, a *single vote* may adopt amendments to the Constitution. The people in this matter are legislating, and upon their dearest rights and interests. There are some things that members will admit, a mere majority should not be allowed to do, to take away our bill of rights, or to pass an agrarian law. He advocated the amendment warmly, and said if he was wrong, he should like to be convinced of it, because if he was not, he could hardly support a Constitution which contained a principle so erroneous as he considered this.

Mr. Zabriskie regretted to hear such remarks as the latter from any gentleman, whether thrown out as a threat or otherwise, that he could not support the Constitution unless his favorite ideas were contained in it.

Mr. Z. dissented entirely from the principle that the Constitution should only be adopted by a majority of all the voters of the State. It is a new feature, and unprecedented in regard to any other action

to be taken by the people on any other subjects.

Mr. Ogden said the amendment is contrary to the principles of the report of the Select Committee and also that of the Committee of the Whole: and the burden of proof therefore lies with him (Mr. B.) to show that he is right, and not with us to show him that he is wrong. The amendment is contrary too, to the principle carried throughout our elections.—The Governor is to be elected by a mere majority of those who choose to come out and vote.

The question then being on agreeing to the amendment as amended,

The yeas and nays were demanded; and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Allen, Brown, Browning, Clark, Condit, Elmer, Gilchrist, Green, Hornblower, R. S. Kennedy, Marsh, Parker, Randolph, Schenck, Spencer, Stratton, Ten Eyck, Westervelt, Wood—19.

Nays. Mr. Brick, Cassedy, Cattell, Child, Connolly, Dickerson, Edsall, Ewing, Field, Fort, Haight, Halsted, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parsons, Pickel, Pitney, Ryerson, Sickler, Stokes, Swain, J. R. Thomson, Vanarsdale, Vroom, Wills, Wurts (v.p.), Zabriskie—35.

The first section, as amended, was then agreed to.

The second section, which was added in committee of the whole, being under consideration,

Mr. Halsted moved to amend the same by striking out the first sentence: "No convention to alter, revise, or amend the Constitution shall be called except by the authority of the people," as he thought the remainder of the section contained all that was necessary. There was another reason too, that it contained a principle of constitutional law, which he was not willing to adopt, however he only made the motion on the ground that the clause was unnecessary.

Motion agreed to.

Mr. Halsted then moved to strike out the whole section, the remainder being as follows:

"The Legislature, by a vote of the majority of the members elect of the Senate, and upon a like vote of the House of Assembly, may submit to the people, at a special election to be held for that purpose only, the question, whether there shall be a convention called to revise, alter, or amend the constitution; but such question shall not be submitted to the people more than once in any ten years."

He advocated the motion at length, and contended that, as we provided a mode of making amendments by the 1st section which we have

already adopted, this was unnecessary.

Mr. Hornblower replied.

Mr. Halsted asked him if it was contended that the Legislature had the right, without a Constitutional provision, to tell the people to send a Convention here, to enlarge or restrain the Constitution?

Mr. Hornblower. No sir, but they have a right to submit the question to the people whether or not a Convention should be called. Mr. H opposed the striking out.

Mr. Vroom followed, and in the course of his argument said that if we adopt a mode in this Constitution for future amendments, the Legislature and the people are bound by it, except in cases of emergency. He was only speaking of ordinary cases.

He thought the section should be modified, that we should only provide for an easy mode of making further amendments. He would not say to the Legislature, as in the last section, that they shall not submit amendments oftener than every five years.—He would leave them unlimited, because that would be a sort of intimation, that they would be expected to do it as often as that—and he would not say either, that the Legislature may submit the question whether there shall be a Convention once in ten years.

Mr. Hornblower contended that if the rule of the gentleman was correct, that the adoption of one mode of making amendments, excludes all others, it is entirely at war with the article in our bill of rights, that we have made so much parade about, that the people are sovereign, and may change their form of government when they choose.

[J]Mr. Jaques moved to amend the same, by striking out all after the word "constitution," and inserting before the words "at a special election", the words "once every twenty years," [G]*because Mr. Jefferson had recommended it,* inasmuch as a new generation comes upon the stage about once in twenty years, and every generation ought to have an opportunity to pass upon their fundamental law.

Mr. Ryerson opposed these restrictions, and would leave the power in the hands of the people, through their representatives, to change their Constitution whenever they might choose.

Mr. Naar defended the original section. He believed the people had the right to call a Convention whenever they chose, but he would settle clearly the right of the Legislature to submit the question as often as once in ten years. [A]He opposed the striking out because he thought it would be throwing things at loose ends and in confusion.

Mr. Jaques changed the form of his amendment, that the Legislature "*may* submit the question to the people once every 20 years,"

whether there shall be a Convention, &c.

Mr. Field said that he had not called the previous question before, and did not know as he should have occasion to do so again—but he would upon this occasion. It was seconded.

[J]And on the question, shall the main question be now put? it was decided in the affirmative.

The question then being on agreeing to [Jaques'] amendment, the same was disagreed to.

The question then recurring on agreeing to the section, as amended,

[A]Mr. Allen inquired whether, if the article was struck out, the Legislature could at any time submit the question to the people, whether there should be a Convention, and whether after an affirmative vote, it could not be called?

Mr. Hornblower replied affirmatively.

[J]The yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Cattell, Condit, Connolly, Elmer, Ewing, Fort, Gilchrist, Hibbler, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Lambert, Marsh, Naar, Parsons, Stites, Stokes, Vanarsdale, Wood—20.

Nays. Mr. Bell, Brick, Brown, Browning, Cassedy, Child, Clark, Dickerson, Edsall, Field, Green, Haight, Halsted, Holmes, Laird, Mickle, Neighbour, Ogden, Parker, Pickel, Pitney, Randolph, Ryerson, Schenck, Sickler, Spencer, Stratton, Swain, Ten Eyck, J. R. Thomson, Vroom, Westervelt, Wills, Wurts (v.p.), Zabriskie—35.

On motion of Mr. Parsons,

The report of the Committee on Future Amendments to the Constitution, as amended, was then referred to the committee appointed to arrange and unite the several reports.

On motion of Mr. Ogden, it was

Resolved, That the Committee of Revision be requested to report to the convention any additional articles, upon points which have not been acted on, that they may consider should be incorporated in the constitution.

The convention then proceeded to the consideration of the report of the committee appointed to inquire into the expediency of instituting a "Court of Reconciliation" [A]in these words, "The Legislature may have power to establish Courts of Reconciliation, the practice and proceedings in which shall be according to the rules of the common law as it was in the times of the Anglo-Saxons."

[J]And the question being on agreeing to the report of the committee of the whole, by which the report of the select committee was dis-

agreed to,

The same was concurred in.

[A]The reports having been all gone through with and referred to the Committee on Revision, [J]Mr. Field called up the communication from James Carnahan, president of the College of New Jersey, inviting the members to attend the ensuing commencement of that institution [A]to-morrow.

He begged to inquire of the Chairman of the Committee of Revision, whether they would be ready to make their report to-morrow, and whether we should lose any time by adjourning over until Thursday morning?

Mr. Vanarsdale said they would be able to present some of the reports in the morning, but only as they came from the printers—but by the afternoon they might probably present their report in proper form to the Convention.

[J]Mr. Field moved that the same be accepted, and that when this convention adjourns, it will adjourn to meet on Thursday morning next, at eight o'clock.

[A]Messrs. Condit, Mickle, Ogden, and others advocated it.

Mr. Ewing opposed it, and thought it would be an improper neglect of our duties.

After considerable debate, as to whether the Constitution could be engrossed so that the Convention might adjourn this week, if the invitation was accepted,

[J]Mr. Mickle asked a division of the motion; which was ordered;

And on the question, shall the invitation be accepted?

The yeas and nays were ordered, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Brown, Browning, Cattell, Child, Clark, Condit, Connolly, Dickerson, Edsall, Elmer, Field, Fort, Gilchrist, Green, Haight, Halsted, Hibbler, Holmes, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Marsh, Mickle, Naar, Ogden, Parker, Parsons, Pitney, Randolph, Schenck, Sickler, Spencer, Stites, Stratton, Ten Eyck, J. R. Thomson, Wood, Wurts (v.p.), Zabriskie—40.

Nays. Mr. Bell, Brick, Ewing, Jaques, Lambert, Neighbour, Pickel, Ryerson, Stokes, Swain, Vanarsdale, Vroom—12.

It was then ordered,

That when this convention adjourns, it will adjourn to meet on Thursday morning next, at eight o'clock.

Mr. Ryerson called up the resolution, offered by him some days since, relative to printing the journal of the convention;

Which was read, and withdrawn by

Mr. Ryerson, who moved the adoption of the following resolution, in place thereof;

"*Resolved*, That the journal of this convention, together with the act of the legislature calling the convention, the proclamation of the governor respecting the election of delegates, the list of the members, and the vote of the people upon the adoption of the constitution, be published; and that a committee of three be appointed for that purpose."

[A]Mr. Wood hoped it would be so modified as to give it to the lowest bidder.

Mr. Child hoped it would be given to those who would do it on the "best terms".

Mr. Ryerson hoped it would be adopted as offered. He wanted the Journal so printed that we should not be ashamed of it. He did not wish to be appointed on the Committee.

After further conversation as to whether the Convention had the power to order it,

[J]Mr. Green moved to amend the same, by striking out all after the word "published", and insert as follows:

"*Resolved*, That a committee of three be appointed to contract for said publication; and that the printing be done, under the direction of the secretary of state, by the printers to this convention, unless it will be done by others upon more favourable terms."

[G]After some discussion, [J]on motion of Mr. Marsh, it was

Ordered, That the resolution and amendment do lie upon the table.

On motion of Mr. Wood,

The convention adjourned to Thursday morning next, at eight o'clock.

[Comment by the Gazette of June 26: "The Convention yesterday, after several weeks of indefatigable devotion to their duties from nine o'clock in the morning till seven in the evening, got through with all the parts of the new Constitution and placed them in the hands of the select committee for revision. They availed themselves of this opportune intermission of their labors to accept an invitation of the Trustees of Princeton College to attend the exercises of Commencement to-day. They will meet again to-morrow morning to commence the final reading of the Constitution, as it shall be reported back by the Committee of Revision. Whether the people of the State shall approve or disapprove of the Constitution they have almost framed, the members of the Convention have, by their untiring industry and honest efforts to perform their duty faithfully, earned a full measure of approbation."]

[J]THURSDAY MORNING, 27th June.

At eight o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Starr.

[G]Mr. Condit said he observed by the minutes that he was named on the committee to draft an address in relation to the new constitution. He supposed that the committee should consist of persons who thought the new constitution ought to be adopted. Candor required him to say that his opinions were such that he ought not to serve on the committee. He, therefore, requested leave to decline.

[J]Which was granted, and

Mr. Halsted appointed in his place.

[A]Mr. Ewing moved to take up the Constitution as revised.

Mr. Vanarsdale reported the Constitution as revised by the Committee, and some conversation took place as to the manner in which it should be acted on.

The Chairman without making any decision, suggested that so far as mere formal amendments, the Convention no doubt had a right to alter it. But if a member wished to make any amendment in substance, it must be with the unanimous consent of the Convention, or by superseding the rule as to re-consideration, as the time for re-consideration had gone by.

[J]For the convenience of the members of the convention, the committee, in preparing this report, have, in all cases where any alteration or change of phraseology is proposed, inserted in the report the original language, and the proposed substitute. The proposed substitutions and additions of the committee are in italics, the words proposed to be stricken out, are in brackets. [They meant parentheses.]

[This form was not followed consistently. The word *provided* was italicized as a matter of style, and therefore should not be read as a substitute or added word. The succeeding text reproduces only those paragraphs in which the Revision Committee proposed changes at this point.]

[A]At the suggestion of Mr. Vroom it was decided to read the instrument entire deliberately, so that the Committee on Revision could state the reasons which had induced them to make the alterations in the various parts, which was done, and it was decided to pass on these verbal alterations as the sections were read.

[G]On motion of Mr. Ewing the Clerk read the whole through.

[J]*A Constitution agreed upon by the delegates of the people of New Jersey, in convention, begun at Trenton on the fourteenth day of May, and continued to the —— day of June, eighteen hundred and forty-four.*

RIGHTS AND PRIVILEGES.

I. All men are (*by nature*) (born equally) free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

III. No person shall (ever,) within this state, be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person within this state (ever) be obliged to pay tithes, taxes, or (any) other rates, for (the) building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged (himself) to perform.

IV. There shall be no establishment of (any) one religious sect, in this state, in preference to another; and no inhabitant of this state shall be denied the enjoyment of any civil right, merely on account of his religious principles.

VII. The right of trial by jury shall remain inviolate; but the legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six men.

IX. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or (navy, or in the) militia, when in actual service in time of war or public danger.

X. No person shall, after (an) acquittal, be tried for the same offence. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident or presumption great.

XI. The privilege of the writ of habeas corpus shall not be suspended, unless (when) in case of rebellion or invasion the public safety may require it.

XIII. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, (but) *except* in a manner prescribed by law.

RIGHT OF SUFFRAGE.

1. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this state one year, and of the county in which he claims his vote five months next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people; *provided*, that no person in the military, naval, or marine service of the United States shall be considered a resident in this state, by being stationed in any garrison, barrack, or military or naval place or station within this state; and no *pauper*, idiot, (or) insane person, (or pauper) or person convicted of a crime which now excludes him from being a witness, unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector.

DISTRIBUTION OF THE POWERS OF GOVERNMENT.

Legislative.

VI. The General Assembly shall be composed of members annually elected by the legal voters of the counties, respectively, who shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. The present apportionment shall continue until the next census of the United States shall have been taken, and an apportionment of members of the General Assembly shall be made by the legislature, at its first session after *the next and* every subsequent enumeration or census, and when made shall remain unaltered until another enumeration shall have been taken; *provided*, that each county shall at all times be entitled to one member: and the whole number of members shall never exceed sixty.

XII. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto: *and the yeas and nays of the members voting on such final passage shall be entered on the journal.*

XXVII. The fund for the support of free schools, and all money, stock, and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public schools, for the equal benefit of all the people *of* (throughout) the state; and it shall not be competent for the legislature to borrow, appropriate, or use the (same) *said fund*, nor any part thereof, for any other purpose, under any pretence whatever.

XXXI. The legislature may at any time vest in the circuit courts or courts of common pleas within the several counties of this state, (the exercise of) chancery powers, so far as relates to the foreclosure of mortgages *or sale of mortgaged premises.*

Executive.

III. The governor shall hold his office for three years (from) *to commence on* the third Tuesday of January next ensuing the (annual) election *for governor* by the people, and ending on the Monday preceding the third Tuesday of January, three years thereafter: and he shall be (ineligible) *incapable* (to) *of holding* that office for three years next after his term of service shall have expired; *and* (provided that) no appointments or nominations to office shall be made by the governor during the last week of his said term.

VII. Every bill which shall have passed both houses shall be presented to the governor: if he approve, he shall sign it, but if (he shall) not, (approve,) he shall return it, with his objections, to the 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, a majority of the whole number of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved of by a majority of the whole number of that house, it shall become

a law; but, in neither house shall the vote be taken on the same day on which the bill shall be returned to it: and 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 five 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 not be a law.

. . . . . .

XIII. In case of the impeachment of the governor, his absence from the state, or inability to discharge the duties of his office, the powers, duties, and emoluments of the office shall devolve upon the president of the Senate; and in case of his death, resignation, or removal, then upon the speaker of the House of Assembly for the time being, until the governor absent or impeached, shall return or be acquitted, or until the disqualification or inability shall cease, or until a new governor be *duly* elected *and qualified*.

XIV. In case of a vacancy in the office of governor, from any other cause than those herein enumerated, or in case of the death of the governor elect before he is qualified into office, (the legislature shall have power to provide by law for filling such vacancy) *the powers, duties, and emoluments of the office shall devolve upon the president of the Senate or speaker of the House of Assembly, as above provided for, until a new governor be duly elected and qualified.*

Judiciary.

. . . . . .

II. The House of Assembly shall have the sole power of impeaching; (by a vote of a majority of all the members); and all impeachments shall be tried by the Senate: the members, when sitting for that purpose, to be on 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 of the Senate.

. . . . . .

V. The supreme court shall consist of a chief justice and four associate justices; (but) the number of the associate justices may be increased or decreased by law, *but* (and) *shall* never be less than two.

. . . . . .

Final judgments in any circuit court may be brought by writ of

error into the supreme court, or directly into the court of errors and appeals (in the last resort.)

. . . . . .

VII. There may be elected under this constitution two, and not more than five, justices of the peace in each of the townships of the several counties of this state, and in each of the wards, in cities that may vote in wards.

Whenever the population of a township or ward shall not exceed two thousand, it may have two justices; when more than two, and not exceeding four thousand, it may have four justices; when more than four, it may have five justices; *provided*, that whenever any township, in this state, not divided into wards, has a population of more than nine thousand inhabitants, (the electors of) such township may (elect) *have* an additional justice for each three thousand inhabitants above six thousand.

. . . . . .

APPOINTING POWER AND TENURE OF OFFICE.

Militia Officers.

. . . . . .

IX. The governor shall appoint the adjutant general, quartermaster general, and all other militia officers *whose appointment is* not otherwise provided for in this constitution.

. . . . . .

Civil Officers.

I. Justices of the supreme court, chancellor, and judges of the court of errors and appeals, shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate.

The justices of the supreme court and chancellor shall hold their offices for the term of seven years; shall, at stated times, receive for their services a compensation, which shall not be diminished during the term of their appointments; and they shall hold no other office under the *government of this* state or *of the* United States (government.)

IV. The attorney general, prosecutors of the pleas, clerk of the supreme court, *clerk of the* (and) court of chancery, and secretary of state, shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate.

They shall hold their offices for five years.

V. *The* law reporter shall be appointed by the justices of the supreme court, or a majority of them; and *the* chancery reporter shall be appointed by the chancellor.

. . . . . .

X. *All officers nominated by the governor, and appointed by him, with the advice and consent of the Senate, shall be commissioned by the governor.*

FUTURE AMENDMENTS.

. . . . . .

SCHEDULE.

That no inconvenience may arise from the change in the constitution of this state, and in order to carry the same into complete operation, it is hereby declared and ordained that—

I. The common and statute laws now in force in the state of New Jersey, not repugnant to this constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the legislature; and all writs, actions, *causes of action*, prosecutions, contracts, claims, and rights of individuals and of bodies corporate, and of the state, and all charters of incorporation, shall continue; and all indictments which shall have been found, or which may hereafter be found, for any crime or offence committed before the adoption of this constitution, may be proceeded upon as if no change had taken place.

The several courts of law and equity of this state, except as herein otherwise provided, shall continue with the like powers and jurisdiction as if this constitution had not been adopted.

. . . . . .

V. The present governor of this state, or in case of his death or inability to act, then the vice president of Council, together with the present members of the Legislative Council and secretary of state, shall constitute a board of state canvassers, in the manner now provided by law, for the purpose of ascertaining and declaring the result of the *next ensuing* (first) election for governor, members of the House of Representatives, and electors of the president and vice president.

VI. The returns of the votes for governor, at the said next ensuing election (under this constitution) shall be transmitted to the secretary of state, (in the manner now provided by law) and shall be counted, and the election declared, in the manner now provided by law in the case of the election of electors of president and vice president.

. . . . . .

XI. It shall be the duty of the governor to fill all vacancies in office happening between the adoption of this constitution and the first session of the Senate, and not otherwise provided for; and *the* commissions *shall* expire at the end of the first session of the Senate, or when

(a) successors shall be elected or appointed under this constitution and qualified into office.

. . . . . .

PROVISIONAL ARTICLES.

. . . . . .

Which was read, and the amendments made by the committee, pursuant to the authority vested in them by the resolution under which they were appointed,

Were severally agreed to [G]unanimously.

[A]The reading of the instrument, and agreeing to the various verbal amendments, occupied the whole of the morning session.

[J]On motion of Mr. Randolph, [A]at half-past 12

[J]The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

[A]Mr. Ryerson moved that the Constitution be taken up and read as amended this morning.

Agreed to.

[J]The convention proceeded to the consideration of the report of the committee appointed to arrange and unite the several reports.

The title being under consideration,

On motion of Mr. Ryerson,

The same was amended, by striking out all after "June" and inserting "in the year of our Lord one thousand eight hundred and forty-four."

The preamble was read, and agreed to, without amendment.

"Rights and Privileges" being under consideration, the first section was read and adopted.

Mr. Browning [A]moved to strike out the words "inherent in," and insert "derived from."

He held that the political power was not "inherent" in any one, but that it was "derived from" the Social Compact, of the people.

Here a point of order was raised as to whether an amendment could now be considered, unless by general consent, which was not granted.

Mr. B. moved to suspend the rule for a re-consideration, so that the amendment might be offered.

Not agreed to, [G]ayes 23, nays 21—(a majority of the whole (30) is necessary.)

[J]The section was then adopted, without amendment.

The third, fourth, fifth, sixth, seventh, eighth and ninth sections were severally read, and agreed to, without amendment.

The tenth section having been read,

Mr. Halsted moved to suspend the rules, for the purpose of offering an amendment to the same, [G]that "no person shall, after acquittal, be tried for the same offence," so that it would read "no person shall be twice tried for the same offence."

[J]And on this motion the yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Brown, Browning, Cassedy, Cattell, Child, Clark, Connolly, Dickerson, Edsall, Gilchrist, Halsted, Marsh, Schenck, Stokes, J. R. Thomson, Wood, Wurts (v.p.)—17.

Nays. Mr. Allen, Bell, Brick, Condit, Elmer, Ewing, Field, Fort, Green, Haight, Hibbler, Holmes, Hornblower, Jaques, P. B. Kennedy, R. S. Kennedy, Laird, Lambert, Mickle, Naar, Neighbour, Ogden, Parker, Pickel, Pitney, Randolph, Ryerson, Sickler, Spencer, Stites, Stratton, Swain, Ten Eyck, Vroom, Wills, Zabriskie—36.

The eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth sections were then severally read, and agreed to, without amendment.

[J]Mr. Ogden moved to recommit the report, so far as acted upon by the convention, to the committee, for the purpose of dividing the same into sections, numbering, and reprinting.

Mr. Clark moved to amend the motion, so as to instruct the committee to add a clause to Sec. XVI, of "Rights and Privileges," excluding highways from the operation of the section, [A]as follows:

"But nothing herein contained shall be construed to require payment to be made for land taken for public highways, unless the Legislature shall otherwise direct by law;"

[G]Which was zealously opposed by Messrs. Hornblower and Browning and advocated by Messrs. Clark and Green, until the discussion was cut off by the previous question moved by Mr. R. S. Kennedy.

[J]And on the question, shall the main question be now put? it was decided in the affirmative,

And on the question, shall the amendment be agreed to? it was determined in the affirmative.

The motion [to recommit], as amended, was then agreed to, [G]29 to 23.

[J]The article on the "Right of Suffrage" being under consideration,

The first and second sections thereof were severally read and agreed to, without amendment.

On motion of Mr. Ryerson,

The same was recommitted to the Committee of Revision.

The "Distribution of the Powers of Government" being under consideration,

The same was agreed to, without amendment, and recommitted to the Committee of Revision.

The article on the "Legislative Department" being under consideration,

The first and second sections were severally read and agreed to, without amendment.

The third section having been read,

Mr. Parker moved to suspend the rule, for the purpose of offering an amendment;

Which motion was agreed to.

Mr. Parker then moved to amend the section, by inserting, after "election", the following: "at which time of meeting the legislative year shall commence."

[D]Mr. Randolph wished the amendment modified so that the term should commence on the Tuesday after the election.

Mr. Parker's motion was agreed to.

Mr. Marsh moved to suspend the rule [A]for the purpose of offering an amendment to the same section [C]to change the time of electing members of the legislature to the first Tuesday in November. Not agreed to.

[J]The section, as amended, was then agreed to.

The fourth, fifth, and sixth sections were severally read, and agreed to, without amendment.

Mr. Green, from the committee to which had been referred the sixteenth section of the article on "Rights and Privileges", with instructions to report a certain amendment, made the following report:

"Add to the end of the sixteenth section the following: 'but nothing herein contained shall be construed to require payment to be made for land taken for public highways, unless the legislature shall otherwise direct by law' ".

The convention proceeded to the consideration of the same. [G]Messrs. Browning and Hornblower zealously opposed the report and amendment.

Mr. Green moved the previous question and it was ordered.

[J]And on the question, shall the report of the committee be agreed to?

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Brick, Brown, Cassedy, Child, Clark, Connolly, Dickerson, Elmer, Ewing, Field, Fort, Green, Haight, Hibbler, Holmes, Laird, Mickle, Neighbour, Ogden, Parker, Pickel, Pitney, Schenck, Sickler, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vroom, Wills, Wurts (v.p.), Zabriskie—35.

Nays. Mr. Bell, Browning, Cattell, Condit, Edsall, Gilchrist, Halsted, Hornblower, Jaques, P. B. Kennedy, Lambert, Marsh, Naar, Parsons, Randolph, Ryerson, Spencer, Stites, Westervelt, Wood—20.

The question then being on agreeing to the section, as amended,

The yeas and nays were demanded, and

It was decided in the affirmative, as follows, *viz:*

Yeas. Mr. Allen, Bell, Brick, Brown, Cassedy, Cattell, Child, Clark, Connolly, Dickerson, Edsall, Elmer, Ewing, Field, Fort, Green, Haight, Hibbler, Holmes, P. B. Kennedy, Laird, Marsh, Mickle, Naar, Neighbour, Ogden, Parker, Parsons, Pickel, Pitney, Randolph, Ryerson, Schenck, Spencer, Stokes, Stratton, Swain, Ten Eyck, J. R. Thomson, R. P. Thompson, Vroom, Wills, Wurts (v.p.), Zabriskie—44.

Nays. Mr. Browning, Condit, Gilchrist, Hornblower, Sickler, Stites, Westervelt, Wood—8.

The seventh, eighth, ninth, tenth, eleventh, and twelfth sections [on the Legislative Department] were severally read, and agreed to, without amendment.

The thirteenth section was read, and amended, by striking out "senators and" and inserting, before "General Assembly", the words "Senate and".

The section, as amended, was then agreed to.

The fourteenth section was amended, in like manner, and, as amended, was adopted.

The fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, and twentieth sections were severally read, and agreed to, without amendment.

The twenty-first section having been read,

Mr. Vroom moved to recommit the same to the Committee on the Legislative Department;

Which motion was agreed to.

The twenty-second and twenty-third section were read, and adopted, without amendment.

The twenty-fourth section having been read,

Mr. Ryerson moved to suspend the rule, for the purpose of amending, by striking out all after the word "contract," [G]the clause prohibiting the passage of any law to deprive a party of any remedy for enforcing a contract which existed when the contract was made, [originally] [A]added upon his motion, but as many distinguished members had expressed their opposition to it, he was willing to move to withdraw it.

Mr. Green had no great tenacity for it, but it was adopted by a very heavy majority, and he hoped it would not be stricken out.

[J]Which motion was disagreed to.

The section was then adopted, without amendment.

The twenty-fifth [which Parker unsuccessfully moved to recommit] twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, and thirty-second sections were severally read, and agreed to, without amendment.

The article on the "Executive Department" being under consideration,

The several sections thereof were read, agreed to, without amendment, and,

On motion of Mr. Ryerson, were referred to the Committee of Revision.

The article on the "Judiciary Department" being under consideration,

The first, second, third, fourth, fifth, and sixth sections were severally read, and agreed to, without amendment.

The seventh section having been read,

Mr. Green moved to suspend the rule, for the purpose of amending the same, by striking out all between the words "whenever" and "six thousand", and inserting the following:

"When a township or ward contains two thousand inhabitants, or less, it may have two justices; when it contains more than two thousand, and not more than four thousand, it may have four justices; and when it contains more than five thousand, it may have five justices; provided, that whenever any township, not voting in wards, contains a population of more than seven thousand, such township may have one additional justice for each additional three thousand inhabitants above four thousand";

Which motion was agreed to, and the amendment adopted.

The section, as amended, was then agreed to, and the article committed to the Committee of Revision.

The article on the "Appointing Power and Tenure of Office" being under consideration,

The sections under the title of "Militia Officers" were severally

read, and agreed to, without amendment.

The sections of the same article, under the title of "Civil Officers", were severally read and agreed to, without amendment.

The article was then recommitted to the Committee on Revision.

The "General Provisions" being under consideration,

The first, second, and third sections were severally read, and adopted, without amendment.

The fourth section having been read,

Mr. Green moved to reconsider the vote by which the same was adopted;

Which motion was agreed to.

Mr. Green moved to amend the same, by striking out all after the word "the", in the first line, and inserting "second day of September, in the year of our Lord one thousand eight hundred and forty-four" [as the date on which the Constitution was to go into effect];

Which amendment was agreed to.

Mr. Condit moved to amend, by inserting, at the end of the section the following: "by a majority of the votes of the people of the state";

Which motion was disagreed to.

On motion of Mr. Zabriskie,

The "General Provisions" were then recommitted to the Committee on Revision.

The article on "Amendments" being under consideration,

The first, and only section, was read and agreed to, without amendment.

Mr. Brown moved to insert the following, as an additional section:

"II. The mode of amendment provided in the preceding section shall not extend to the 'rights and privileges' declared in the first article of this constitution, nor to the republican form of government."

[G]Mr. Brown supported the amendment ably but briefly.

Messrs. Zabriskie and Parsons opposed the amendment.

Messrs. Ryerson and Naar advocated the amendment with certain modifications.

Mr. Brown wished a full vote and moved a call of the house. Not ordered.

[J]And on this motion the yeas and nays were demanded, and,

It was decided in the negative, as follows, *vis:*

Yeas. Mr. Bell, Brown, Browning, Cattell, Child, Elmer, Green, Halsted, P. B. Kennedy, R. S. Kennedy, Marsh, Mickle, Naar, Parker, Pitney, Ryerson, Schenck, Sickler, Spencer, Stites, Stokes, Ten Eyck, Wood—23.

Nays. Mr. Brick, Cassedy, Condit, Connolly, Dickerson, Fort, Hibbler, Holmes, Hornblower, Jaques, Laird, Lambert, Neighbour, Ogden, Parsons, Pickel, Randolph, Swain, Wills, Wurts (v.p.), Zabriskie—21.

The article on amendments was then recommitted to the Committee on Revision.

The "Schedule" being under consideration,

The several sections of the same were read, agreed to without amendment, and recommitted to the Committee on Revision.

Mr. Vroom, from the committee to which had been recommitted the twenty-first section of the article on the "Legislative Department", reported to amend the same, by striking out the words "impose and provide for a direct annual tax, sufficient, with such other appropriations as may be made therein, exclusive of loans," and insert as follows: "provide the means, exclusive of loans, by specific appropriations and by such direct annual tax as may be necessary in addition thereto."

The convention proceeded to the consideration, and,

On motion of Mr. Randolph,

The report was amended by inserting, before "means," the words "ways and", and striking out all after the word "loans", so as to read, "provide the ways and means, exclusive of loans"; and, as amended, was agreed to.

The section, as amended, was then adopted, and the whole article on the "Legislative Department" was recommitted to the Committee of Revision.

[G]Having gone through with the whole constitution and referred it again to the Committee of Revision for final correction and reprinting . . . at half past 7,

[J]On motion of Mr. Randolph,

The convention adjourned till to-morrow morning, at nine o'clock.

[J]FRIDAY MORNING, 28th June.

At nine o'clock the convention met, pursuant to adjournment.

Mr. R. S. Kennedy offered the following resolution:

Resolved, That the president of this convention draw on the treasurer for the sum of five dollars, in favour of each member, for the

payment of newspapers and postage:

Which was read, and

Mr. Hornblower moved to amend the same, by striking out "five" and inserting "three";

Which amendment was disagreed to.

[G]Mr. Vroom moved to strike out newspapers. After a discussion by Messrs. Vroom, Naar, Hornblower, Child, Ryerson, Parker, R. S. Kennedy, Dickerson, Condit and Ewing, the amendment of Mr. Vroom was not agreed to.

[J]Mr. Naar moved that the resolution do lie on the table;

Which motion was disagreed to.

On motion of Mr. Jaques,

The same was amended, by striking out "five" and inserting "two."

[G]Mr. R. S. Kennedy wished to withdraw the resolution. The chair said that could not be done. Mr. R. S. Kennedy moved to amend to the effect that every gentleman who is too conscientious to receive this money, give back his penknife. (Laughter).

[J]Mr. Parker moved that the resolution, as amended, do lie on the table; [and] [G]called for the yeas and nays and they were ordered. The discussion was continued by Messrs. Zabriskie, Parker, Hornblower and Randolph.

[J]Which motion was disagreed to.

Mr. Randolph moved to amend, by striking out all after *"Resolved"*, and inserting the following:

"That the president of the convention be authorized to cause to be paid, for the postage and newspapers of members, any sum, not exceeding five dollars to each member, to be charged to the contingent expenses of the convention";

Which amendment was agreed to.

The question then being on agreeing to the resolution, as amended,

The yeas and nays were demanded, and

It was decided in the affirmative, as follows: *viz:*

Yeas. Mr. Bell, Brick, Brown, Browning, Child, Clark, Dickerson, Edsall, Ewing, Field, Fort, Haight, Hibbler, Hornblower, P. B. Kennedy, R. S. Kennedy, Laird, Marsh, Mickle, Neighbour, Ogden, Parsons, Pitney, Randolph, Schenck, Sickler, Spencer, Stites, Stokes, Stratton, Ten Eyck, R. P. Thompson, Wood, Zabriskie—34.

Nays. Mr. Allen, Cassedy, Condit, Connolly, Gilchrist, Green, Halsted, Holmes, Jaques, Lambert, Naar, Parker, Pickel, Ryerson, Swain, Vanarsdale, Vroom, Westervelt, Wills, Wurts (v.p.)—20.

On motion of Mr. Pickel, it was

Resolved, That the doorkeeper be allowed the sum of two dollars per day, for his services during the sitting of this convention, and the assistant doorkeeper the sum of seventy-five cents per day.

On motion of Mr. Ogden, it was

Resolved, That the thanks of this convention be tendered, through the presiding officer, to the clergy of the city of Trenton, for their kind offices, in opening its daily sessions with prayer.

[G]Which was opposed by Mr. Stokes, and advocated by Messrs. Ogden and R. S. Kennedy.

[J]On motion of R. P. Thompson, it was

Resolved, That a special committee of three persons be appointed to report to the convention the proper compensation to be paid to the secretary and assistant secretary.

[G]Messrs. R. P. Thompson, Randolph and Gilchrist were appointed.

[J]Mr. Clark offered the following, to be inserted as the fifth section of "General Provisions":

"In view of the rights reserved by the state, in several charters of incorporation heretofore granted for internal improvements, and the various supplements thereto, it shall be the duty of the legislature to take such action as will give to the people of the state timely information of the extent and value of these rights, so as to enable them to act wisely in reference thereto, and to the exclusive grants contained in said charters";

Which was read, and the convention proceeded to the consideration of the same.

[G]Mr. Clark explained in full the object of this section in reference to the right of the State to purchase the internal improvements, in order to relieve the people from the pressure of the exclusive grants or monopoly features in the charters of these companies.

Mr. Browning also advocated the section.

Messrs. Allen, Field, Ryerson, and Condit, objected to the clause of the section following the words, "in reference thereto." Mr. Brown advocated the last clause.

The section was further opposed by Messrs. Field, R. P. Thompson, and Ogden, and advocated by Mr. Clark.

The latter clause was opposed by Mr. Ryerson.

Mr. Clark modified the section by inserting after the words "to relieve themselves," the words "if they shall deem it expedient."

Mr. Vroom moved to substitute for the last clause, "and to the exclusive grants contained in said charters;" which the mover accepted.

The discussion was cut off by the previous question, moved by Mr.

Zabriskie. The Chair decided that the section was not divisible.

And on the question, shall the main question be now put? it was decided in the affirmative.

And on the question of agreeing to the proposed section,

The yeas and nays were demanded, and

It was decided in the negative, as follows, *viz:*

Yeas. Mr. Brick, Brown, Browning, Cassedy, Clark, Condit, Connolly, Dickerson, Fort, Gilchrist, Halsted, Hornblower, R. S. Kennedy, Marsh, Parsons, Randolph, Ryerson, Schenck, Spencer, Stites, Stratton, Ten Eyck, Vroom, Westervelt, Wood, Wurts (v.p.)—26.

Nays. Mr. Allen, Child, Edsall, Ewing, Field, Green, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Mickle, Neighbour, Ogden, Parker, Pickel, Pitney, Sickler, Stokes, Swain, R. P. Thompson, Vanarsdale, Wills, Zabriskie—26.

The committee to which had been recommitted the several articles of the constitution, as amended in convention, reported the same, arranged, divided, and numbered, complete.

[The constitution, as framed to this point, again appears in the Journal. As all alterations of the preceding day's report have already been recorded, it is necessary only to show the sections which differ from those in the final draft. Section numbers are those of the June 27 draft. Italicized words were omitted in the final draft. There were also some minor changes of punctuation, which are not indicated.]

LEGISLATIVE.

XXXI. The legislature may *at any time* vest in the circuit courts or courts of common pleas, within the several counties of this state, chancery powers, so far as relates to the foreclosure of mortgages or sale of mortgaged premises.

EXECUTIVE.

VIII. No member of Congress, or person holding an office under the United States, or this state, shall exercise the office of governor; and in case the governor, or person administering the government, shall accept any office under *the government of* the United States, or *of* this state, his office of governor shall thereupon be vacant.

XI. The governor, and all other civil officers under this state, shall be liable to impeachment for misdemeanor in office. [Final draft with Hornblower's amendment added: "during their continuance in office and for two years thereafter."]

XII. In case of the death, resignation, or removal from office of the governor, the powers, duties, and emoluments of the office shall devolve upon the president of the Senate, and in case of his death,

resignation, or removal, then upon the speaker of the House of Assembly for the time being, until another governor shall be elected and qualified; but in such case another governor shall be chosen at the next election for members of the *state* legislature, unless such death, resignation, or removal shall occur within thirty days immediately preceding such next election, in which case a governor shall be chosen at the second succeeding election for members of the *state* legislature. When a vacancy happens, during the recess of the legislature, in any office which is to be filled by the governor and Senate, or by the legislature in joint meeting, the governor shall fill such vacancy, and the commission shall expire at the end of the next session of the legislature, unless a successor shall be sooner appointed: when a vacancy happens in the office of clerk or surrogate of any county the governor shall fill such vacancy, and the commission shall expire when a successor is *duly* elected and qualified.

CIVIL OFFICERS.

VI. [first clause] Clerks and surrogates of counties shall be elected by the people of their respective counties, at the annual elections for members of the General Assembly *of this state.*

VII. [first clause] Sheriffs and coroners shall be elected annually, by the people of their respective counties, at the annual elections for members of the General Assembly *of this state.*

VIII. [third clause] They shall hold their offices for five years: *except* when elected to fill vacancies, they shall hold for the unexpired term only; *provided* that the commission of any justice of the peace shall become vacant upon his ceasing to reside in the township in which he was elected [*but* substituted for *except; provided* remained].

IX. All other officers, whose appointments are not otherwise provided for by law, shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate; and *they* shall hold their offices for the time prescribed by law.

PROVISIONAL ARTICLES.

V. The term of office of all officers elected or appointed *under* this constitution, except when herein otherwise directed, shall commence on the day of the date of their respective commissions; but no commission for any office shall bear date prior to the expiration of the term of the incumbent of said office [*pursuant to the provisions of* substituted for *under;* became Paragraph 11 of Civil Officers].

SCHEDULE.

V. The present governor, or in case of his death or inability to act, *then* the vice president of Council, together with the present members

of the Legislative Council and secretary of state, shall constitute a board of state canvassers, in the manner now provided by law, for the purpose of ascertaining and declaring the result of the next ensuing election for governor, members of the House of Representatives, and electors of president and vice president.

X. The legislature shall pass all laws necessary to carry into effect the provisions of this constitution [became Paragraph 11 of final draft].

Done by the delegates of the people, in convention at Trenton, on the —— day of June, in the year of our Lord eighteen hundred and forty-four, and of the independence of the United States the sixty-eighth. [Not in first report of June 27; changed in final draft to read as follows: "Done in convention, at the State House in Trenton, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-four," etc.]

[G]On motion of Mr. Ryerson, the Convention again took up the Constitution as reprinted after the final revision by the Committee of Revision, and agreed to as much thereof as had been printed [the Preamble, Rights and Privileges, Right of Suffrage, Distribution of the Powers of Government, eight subdivisions of the Legislative article and ten sections of the Executive article].

[G]Mr. Hornblower moved to amend [J]the eleventh section of the article on the "Executive Department" [G]so as to provide that public officers might be impeached [J]"during their continuance in office, and for two years thereafter."

[G]Adopted by unanimous consent.

[J]The further consideration was then postponed to this afternoon.

Mr. Lambert offered the following resolution:

Resolved, That one thousand copies of the constitution be printed, in pamphlet form, for the use of the members of this convention;

Which was read, and,

On motion of Mr. Zabriskie, was ordered to lie on the table.

The vice president presented the following communication from the president:

"To the Honourable Delegates to the Convention for forming a Constitution for the State of New Jersey.

"The complaint which obliged me to leave Trenton still continues, and I am therefore constrained to abandon the hope of being able to return to the convention this week. As you are about to close your important business, to prevent any delay occasioned by my absence, I hereby resign my office, as president of this convention. I do this with great reluctance, as I would place my signature to the constitution which you are prepared to offer to the people of the state, for their acceptance, with great confidence that it will accomplish the important objects for which it is intended.

"The present constitution of the state is so radically defective, that it affords no check upon the legislative power, or any security for the rights and privileges of the people.

"I tender you my sincere thanks for the kindness and indulgence you have manifested towards me during your sessions, and which I shall retain in grateful remembrance.

"I am, with great respect,
your obedient servant,
I. H. WILLIAMSON.

Elizabethtown, June 28, 1844."

Which was read, and, on motion of

Mr. Stratton, was ordered to lie on the table.

Mr. R. P. Thompson called up the resolution relative to printing pamphlet copies of the constitution, and moved that the same be referred to the committee on contingent expenses;

Which motion was agreed to.

On motion of Mr. Mickle,

The convention adjourned to this afternoon, at three o'clock.

[J]At three o'clock the convention met, pursuant to adjournment.

Mr. R. P. Thompson, from the select committee appointed to determine the compensation to be paid to the secretary and assistant secretary, made the following report:

Resolved, That the secretary and assistant secretary shall each be entitled to receive the sum of three dollars for each day they have attended the sittings of the convention; and the said secretaries shall jointly be entitled to receive the sum of ten cents for each sheet, of one hundred words, for entering the minutes on the journal, and the like sum for recording the said minutes in a proper book, to be provided for that purpose; and the president is hereby authorized to draw his warrant on the treasurer for the necessary sum to pay the above.

R. P. THOMPSON,
JOS. F. RANDOLPH,
R. GILCHRIST,
} *Committee.*

Which was read and adopted.

Mr. Ryerson called up the resolution, offered by him some days since, with regard to the printing of the journal of this convention;

Which, together with the amendment offered to the same were read. [G]The question pending was on Mr. Green's substitute providing that the printing should be done by Phillips and Boswell, printers of the Convention, unless others would do it upon more favorable terms.

Messrs. Hornblower, Ogden and Halsted doubted the right of the Convention to order this printing to be done, and Mr. Pickel moved to lay the resolution on the table; which was agreed to.

[J]Mr. Child offered the following, to be inserted as an additional section to the "General Provisions," [G]being, he said, the one offered this morning by Mr. Clark, stripped of its objectionable feature:

[J]"In view of the rights reserved by the state in several charters of incorporation heretofore granted for internal improvements, the various supplements thereto, it shall be the duty of the legislature to take such action as will give to the people of the state timely information of the extent and value of their rights, so as to enable them to act wisely in reference thereto."

Mr. Pickel moved that the same do lie on the table; [G]Mr. Browning hoped it would not be laid on the table, and called for the yeas and nays, and

[J]It was decided in the affirmative, as follows *viz*:

Yeas. Mr. Allen, Brick, Connolly, Edsall, Ewing, Field, Haight, Hibbler, Holmes, Jaques, P. B. Kennedy, Laird, Lambert, Neighbour, Ogden, Parker, Pickel, Pitney, Sickler, Stokes, Swain, R. P. Thompson, Vanarsdale, Wills, Zabriskie—25.

Nays. Mr. Brown, Browning, Cattell, Child, Clark, Condit, Fort, Gilchrist, Halsted, Hornblower, R. S. Kennedy, Marsh, Parsons, Randolph, Ryerson, Spencer, Stites, Stratton, Ten Eyck, Vroom, Westervelt, Wood, Wurts (v.p.)—23.

The convention then proceeded to the consideration of the unfinished business of the morning, being the "Constitution", as reported by the committee appointed to arrange and unite the several reports.

The same was read, and verbally amended.

Mr. Browning moved to insert the following as Sec. II, of the "Schedule":

"Sec. II. Clerks of counties shall perform all the duties now performed by the clerks of the inferior courts of common pleas and quarter-sessions, in the several counties, until otherwise provided by law";

Which motion was disagreed to.

Mr. R. P. Thompson moved to amend the sixth clause of the second section of Article VII, on the "Appointing Power and Tenure of Office", by inserting, after "clerks", the words "of the inferior courts of common pleas and quarter-sessions";

Which motion was disagreed to.

On motion of Mr. R. P. Thompson,

The sixth clause of the second section of Article VII, and the seventh section of Article X, were then severally referred to the Committee on the Judiciary.

[G]Mr. Dickerson from the committee to draft an address made a report; which was read and ordered to lie on the table.

[J]Mr. R. P. Thompson called up the communication from the president, transmitting his resignation as president of the convention.

[G]Mr. Hornblower moved the resignation be not accepted. From his very high respect and regard for the President he wished his name as President to be affixed to the Constitution, and that the instrument should be sent to Elizabethtown, for his signature.

Messrs. R. P. Thompson, Parker, Brown, Clark, Dickerson, Vanarsdale, and Condit, declared their full concurrence in the high respect and regard for the President, expressed by the Chief Justice, and their desire that Mr. Williamson should sign the Constitution as President, but thought there were insuperable obstacles to the course proposed by Mr. Hornblower.

Mr. Hornblower withdrew his motion.

[R. P. Thompson] [J]offered the following preamble and resolution:

Whereas, the convention has been informed, by a letter from the president, that his continued ill health prevents his further attendance, and renders necessary the resignation which accompanies the communication—

Resolved, That this convention sympathize deeply with the president, and greatly regret the cause which deprives them of his valuable aid; and that while every member would have rejoiced that the instrument, which we are about to submit to the people of New Jersey, should have borne with it the honoured name of a citizen whose whole feelings are in favour of its adoption, and who is identified with the whole history of our state, and whose public and private virtues are held in such high esteem by her citizens, yet we are compelled, by painful necessity and with deep regret, to accept his resignation;

Which was read and adopted.

On motion of Mr. Ryerson,

The convention then proceeded to the election of a president, when,

[G]Mr. Parker nominated Alexander Wurts, Esq., as President of the Convention.

Mr. Ewing seconded the nomination, and requested the Secretary to put the question.

Mr. Wurts interrupted the Secretary to express his desire that the Convention would not confer this honor upon him, in consequence of his having occupied the office of Vice President. He had considered himself merely as the deputy of the President, for the purpose of relieving him of the burden of his duties. He was ardently attached to the new Constitution, and anxious for its adoption, and he hoped, therefore, that it might go out with the signature of some one of the veperable and distinguished men of the Convention, whose name would be influential with the people of New Jersey, and commend the Constitution to their confidence and approbation.

[J]Alexander Wurts, of the county of Hunterdon, was unanimously chosen.

On motion of [illegible] R. P. Thompson, it was

Ordered [illegible] president transmit a copy of the above preamble and resolution to the Hon. Isaac H. Williamson, late president of this convention.

Mr. Vanarsdale, from the committee to which had been referred the sixth clause of the second section of Article VII, and the seventh section of Article X, reported the following, to be inserted as Sec. XI, of the "Schedule":

"11. Clerks of counties shall be clerks of the inferior courts of common pleas and quarter-sessions of the several counties, and perform the duties, and be subject to the regulations, now required of them by law, until otherwise ordained by the legislature";

Which was agreed to.

Mr. Vanarsdale, from the committee appointed to arrange and unite the several reports, reported the following, as the concluding paragraph of the constitution:

"Done in convention, at the State House in Trenton, on the —— day of June, in the year of our Lord one thousand eight hundred and forty-four, and of the independence of the United States of America, the sixty-eighth."

Which was read, and ordered to lie on the table.

Mr. Connolly, from the committee to which was referred the resolution relative to printing the constitution in pamphlet form, reported the following resolution:

Resolved, That one thousand copies of the constitution be printed in pamphlet form, for the use of the members of this convention for distribution;

Which was read and agreed to.

[G]Mr. Zabriskie called up the address reported by Mr. Dickerson: and it was read.

Mr. Z. said the address was exceedingly well drawn, but it did not present any considerations why the constitution should be adopted. If nothing more could be said in favor of the new Constitution, he thought it would not be adopted. He understood another address had been drawn up in the committee, and if it was in the house he would like it to be read.

Mr. Dickerson expressed his wish that the address should be read.

Mr. Ewing said it was in his hands; he had borrowed it from the writer.

Messrs. R. S. Kennedy, Halsted and Marsh opposed the reading; but after some remarks by Messrs. Condit and Ewing, the other address was read.

Mr. Randolph said he was opposed to issuing any address, and he moved to lay the whole subject on the table. Agreed to.

On motion of Mr. R. P. Thompson [R. S. Kennedy, according to the Journal] it was ordered that the final vote on the adoption of the Constitution be taken now: and on the question *Shall the Constitution now pass?* the names of the members were called. All [55] answered aye, simply, except as follows [Condit, Stokes and, of course, Williamson]:

Mr. Condit said he came here with a sincere desire to frame a constitution which should be perfect and free from the many defects of the old constitution; and, I admit, said Mr. C., that many of the defects of the old constitution have been remedied and some improvements made.—But one prominent, palpable defect in the old constitution, in relation to the mode of organizing the upper branch of the legislature, has not been remedied, but is engrafted upon the new instrument. This is to me an insuperable obstacle. It is well known that a plan has been presented to the convention to remedy that defect, and one which I considered sufficient.—The convention have twice refused to adopt it: and by so doing there is perpetuated a system which does great injustice to some portions of New Jersey. The inequality of the representation of the counties in the upper branch of the legislature is well known. To my constituents, it does great injustice, and I hold myself bound to represent faithfully their interests. I should have been very

glad to unite with the other members of the Convention in voting for this constitution; but considering this a vital defect, I am constrained to record my vote in the negative.

Mr. Hornblower concurred in the objections of Mr. C., to the unequal representation in the upper branch of the legislature, yet he had brought his mind reluctantly to consent to vote in the affirmative.

Mr. Stokes said, that with his peculiar views, he felt a difficulty. He could not record his name in favor of it without making a qualification as to the military system established by the constitution. He believed, nevertheless, that the instrument was very excellent, and as good as the people of New Jersey are prepared for. He asked, that the convention would excuse him from voting; [J]which was unanimously granted.

The constitution was then declared to be adopted, and ordered to be engrossed.

On motion of Mr. Zabriskie, it was

Resolved, That the members of this convention, who desire it, may subscribe their names, respectively, to the constitution just adopted, when engrossed.

[G]This was discussed by Messrs. Zabriskie, Green, Parker, Hornblower, Browning, Clark, Vroom, R. P. Thompson, and Parsons, and agreed to unanimously.

[J]On motion of Mr. Mickle,

The convention adjourned till to-morrow morning, at eight o'clock.

[J]SATURDAY MORNING, 29th June.

At eight o'clock the convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. Kidder.

Mr. Zabriskie offered the following resolution:

Resolved, That the secretary of this convention furnish Bernard Connolly, esq., with an authenticated copy of the journal, for publication at his own risk;

Which was read, and,

On motion of Mr. Marsh, was ordered to lie on the table.

Mr. Randolph moved to take up the concluding paragraph attached to the constitution;

Which motion was agreed to, [and he] [G]moved to fill the blank . . . left for the date of its adoption, with the 28th.

[J]On motion of Mr. Ewing,

The blank was ordered to be filled up with the words "twenty-ninth", and the paragraph to be engrossed with the constitution.

On motion of Mr. R. P. Thompson, it was

Ordered, That the vote by which the resolution relative to signing the constitution was adopted, be reconsidered.

On motion of Mr. Clark, the same was amended, by striking out all after the word "*Resolved*", and inserting the following:

"That the members of this convention do sign the constitution which has been agreed upon by them."

The resolution, as reconsidered and amended, was then adopted.

Mr. Parker offered the following resolutions:

Resolved, That —— copies of the journal of this convention be printed, in pamphlet form, under the direction of Peter D. Vroom and Henry W. Green, esq.'s, and that the president sign a warrant to them, on the state treasurer, for a sum not exceeding ——, to defray the expense, to be paid to the person performing the service, upon the execution of the work.

Resolved, That —— copies be furnished to each member of the convention, and that the remainder be deposited with the secretary of state, subject to disposal by the legislature;

Which was read, and,

On motion of Mr. Marsh,

The second blank in the first resolution was ordered to be filled up with the words "four hundred dollars."

On motion of Mr. Mickle, the first blank in the same was ordered to be filled up with the words "one thousand."

On motion of Mr. R. S. Kennedy, the blank in the second resolution was ordered to be filled up with the words "one bound copy and four unbound."

On motion of Mr. Mickle,

The second resolution was amended, by inserting, between the words "convention" and "and", the following: "and also to each of the secretaries of the convention."

The resolutions, as amended, were then adopted.

On motion of Mr. Zabriskie, it was

Resolved, That the members of this convention sign the constitution by delegations, and that a space be reserved for those who are absent.

On motion of Mr. Parker [Green, according to the Gazette], it was

Resolved, That the journal of this convention be delivered to the governor of this state, to be filed, together with the constitution, in the office of the secretary of state, for preservation.

On motion of Mr. Pickel, it was

Resolved, That the librarian receive the sum of two dollars per day, for his services during the session of this convention.

The "CONSTITUTION", as engrossed [G]on parchment, [J]was then read and compared, and,

On motion of Mr. Hornblower,

Ordered, That the same be now signed by the president and secretaries.

[G]The other members of the Convention also subscribed the Constitution, except Mr. Condit of Essex and Mr. Williamson of Essex, the latter of whom was absent in consequence of illness.

[J]Mr. Connolly, from the committee on contingent expenses, made the following report:

The committee on contingent expenses beg leave to make the following report:

STATE OF NEW JERSEY, IN CONVENTION.

Sundry incidental charges.

To	Charles Scott, for stationery,	$175.14
	David Clark, do.,	19.95
	Wm. Pearson, repairing locks,	3.75
	Wm. Paterson, for six blank minute books,	1.87½
	Joseph G. Brearley, as per bill,	3.55
	Joseph Marshall, for parchment,	4.50
	Franklin S. Mills, for printing rules,	20.40
	Wm. Napton, sundries,	11.75
	Elias Phillips, for two pitchers,	1.18¾
	Sylvester Van Sickell, for repairing carpet,	1.50
	W. W. Norcross, for candles,	3.75
	Wm. Paterson, for stationery,	28.50
	Sherman & Harron, for printing diagram and list of delegates,	35.00
	Thos. Arrowsmith, treasurer, for abstract of bank taxes in this state,	3.00
	Wm. Paterson, for blank book to record the minutes of this convention,	10.00
	Eli Morris, engrossing the constitution, and parchment.	31.00
		$354.85¼

Mr. Connolly presented the account of Phillips & Boswell, printers to the convention, amounting to two hundred and ten dollars and sixty-three cents, [G]but refused to report it, alleging that it was higher than the contract price. The subject was discussed for some time, some gentlemen contending that the bill should not be paid and others that it ought to be.

[J]On motion of Mr. Randolph,

The report of the committee was accepted, and the same ordered to be paid.

[J]On motion of Mr. Parsons,

The account of Phillips & Boswell was allowed, and the president authorized to draw a warrant in their favour for the amount thereof.

On motion of Mr. Stratton, it was unanimously

Resolved, That the thanks of this convention be presented to the Hon. Alexander Wurts, for the able, dignified, and impartial manner in which he has discharged the duties of presiding officer of this convention.

On motion of Mr. Cattell, it was unanimously

Resolved, That the thanks of the convention are due, and are hereby tendered to William Paterson and Thomas J. Saunders, secretaries of the convention, for the able and courteous manner in which they have discharged the arduous duties of secretaries of this convention.

The constitution, as agreed to, engrossed, and signed, was then delivered in open convention, by the president, to Daniel Haines, governor of the state, who acknowledged the reception of the same, by causing the following certificate to be endorsed thereon:

"NEW JERSEY, *ss.*

"*Be it remembered*, that on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-four, the above constitution was delivered to the governor of this state, in open convention, by the president thereof; and it is thereupon, by the said governor, ordered and directed that the same be filed in the office of the secretary of state.

DAN'L. HAINES, *Gov. of N. J.*"

And having signed the same, delivered the "Constitution," as herein before agreed upon, to the secretary of state, pursuant to the act calling the convention, to be by him deposited in his office, and there to be filed, as a perpetual record.

On motion of Mr. Vroom, it was unanimously

Resolved, That the thanks of this convention be tendered to the Hon. Isaac H. Williamson, late president of the convention, for the able, impartial, and dignified manner in which he has discharged the duties of his office.

On motion of Mr. Zabriskie,

The vote by which the resolutions relative to printing the journal of this convention, as amended, was adopted, was ordered to be reconsidered.

On motion of Mr. Zabriskie, the same were amended, by adding the following:

"*Resolved*, That the secretary furnish a copy of the journal for publication."

The resolutions, as amended, were then adopted.

The president then addressed the convention, as follows:

GENTLEMEN,

I beg permission to detain you a moment, while I express my deep sense of the distinguished honour which the convention has conferred upon me.

My most respectful and grateful acknowledgments are tendered to the convention, for the signal distinction of having been selected to preside over its deliberations.

I assure you, gentlemen, that I duly appreciate this flattering evidence of your confidence and regard, and that it will be held by me, while life endures, in the most pleasing and grateful remembrance.

The situation of presiding officer in such an assembly as this is, and convened, as we are, for purposes of such high and momentous import, is indeed a post of honour. I feel it more sensibly, because it was entirely unexpected, and, considering how many distinguished gentlemen surround me, unmerited.

I return you my most grateful thanks for the kind expression of your approbation of the manner in which I have discharged the duties that the Convention were pleased to impose upon me.

Most sincerely do I regret that those duties call upon me now, to stand in the place of the venerable and distinguished individual who was called by acclamation to preside over our deliberations, at the first meeting of the convention. And sure I am, in saying this, I do but

express the sentiments of every member of the convention.

No one enjoys in a higher degree than that gentleman, the love, respect, and confidence of the people of New Jersey. His name, as president of the convention to the constitution we have prepared, would have been a tower of strength in its defence. His heart was in the work, and we all regret that sickness has compelled his resignation, and deprived the convention of the benefit of his counsel and assistance in the closing scene of its labours.

My best efforts have been devoted to the faithful discharge of the responsible duties of the chair, and if, in the discharge of those duties, the feelings of any gentleman have been wounded, or his rights invaded, I beg him to attribute it to accident, and not to design. I return the members of the convention my thanks for their uniform support and kind treatment.

And now, gentlemen, allow me to congratulate the convention upon the happy result of its labours, and the uniform spirit of harmony which has marked our deliberations.

The members of the convention have faithfully discharged their duty, by conforming to the honourable and patriotic example set them by their constituents.

My sincere hope is, that the constitution we have framed may find favour with those who committed this high trust to us, and redound to the lasting welfare and happiness of the state.

Accept, gentlemen, my best wishes for your future health and prosperity, and a speedy and happy meeting with your respective families.

The secretary and assistant secretary then returned thanks for the honour respectively conferred upon them, and for the approbation expressed by the convention of the manner in which they had severally discharged the duties of their offices.

On motion of Mr. Zabriskie,

The convention then adjourned *sine die*.

ALEXANDER WURTS,
President of the Convention.

WILLIAM PATERSON, *Secretary*,
TH: J. SAUNDERS, *Assist. Sec'y.*

APPENDIX.

THE CONSTITUTION,

As adopted and signed by the officers and delegates, together with the certificates of the governor and secretary of state.

STATE OF NEW JERSEY.

A CONSTITUTION,

Agreed upon by the delegates of the people of New Jersey, in convention, begun at Trenton, on the fourteenth day of May, and continued to the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-four.

WE, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavours to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this constitution.

ARTICLE I.

RIGHTS AND PRIVILEGES.

1. All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect, in preference to another: no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

5. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, 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.

6. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the papers and things to be seized.

7. The right of trial by jury shall remain inviolate: but the legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six men.

8. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defence.

9. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy; or in the militia, when in actual service in time of war or public danger.

10. No person shall after acquittal, be tried for the same offence. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident or presumption great.

11. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

12. The military shall be in strict subordination to the civil power.

13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war except in a manner prescribed by law.

14. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

15. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

16. Private property shall not be taken for public use, without just compensation; but land may be taken for public highways as heretofore until the legislature shall direct compensation to be made.

17. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE II.

RIGHT OF SUFFRAGE.

1. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this state one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people; *provided*, that no person in the military, naval, or marine service of the United States shall be considered a resident in this state, by being stationed in any garrison, barrack, or military or naval place or station within this state; and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector.

2. The legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of bribery at elections.

ARTICLE III.

DISTRIBUTION OF THE POWERS OF GOVERNMENT.

1. The powers of the government shall be divided into three distinct departments,—the legislative, executive, and judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided.

ARTICLE IV.

LEGISLATIVE.

Section I.

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the state for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age

of twenty-one years, and have been a citizen and inhabitant of the state for two years, and of the county for which he shall be chosen one year next before his election; *provided*, that no person shall be eligible as a member of either house of the legislature, who shall not be entitled to the right of suffrage.

3. Members of the Senate and General Assembly shall be elected yearly and every year, on the second Tuesday of October; and the two houses shall meet separately on the second Tuesday in January next after the said day of election, at which time of meeting the legislative year shall commence; but the time of holding such election may be altered by the legislature.

Section II.

1. The Senate shall be composed of one senator from each county in the state, elected by the legal voters of the counties, respectively, for three years.

2. As soon as the Senate shall meet after the first election to be held in pursuance of this constitution, they shall be divided as equally as may be into three classes. The seats of the senators 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 class may be elected every year: and if vacancies happen, by resignation or otherwise, the persons elected to supply such vacancies shall be elected for the unexpired terms only.

Section III.

1. The General Assembly shall be composed of members annually elected by the legal voters of the counties, respectively, who shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. The present apportionment shall continue until the next census of the United States shall have been taken, and an apportionment of members of the General Assembly shall be made by the legislature at its first session after the next and every subsequent enumeration or census, and when made shall remain unaltered until another enumeration shall have been taken; *provided*, that each county shall at all times be entitled to one member: and the whole number of members shall never exceed sixty.

Section IV.

1. Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or otherwise; but if vacancies occur

during the recess of the legislature, the writs may be issued by the governor, under such regulations as may be prescribed by law.

2. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, may expel a member.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

6. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal.

7. Members of the Senate and General Assembly shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the state; which compensation shall not exceed the sum of three dollars per day for the period of forty days from the commencement of the session; and shall not exceed the sum of one dollar and fifty cents per day for the remainder of the session. When convened in extra-session by the governor, they shall receive such sum as shall be fixed for the first forty days of the ordinary session. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, on the most usual route. The President of the Senate and the Speaker of the House of Assembly shall, in virtue of their offices, receive an additional compensation, equal to one-third of their per diem allowance as members.

8. Members of the Senate and General Assembly shall, in all cases except treason, felony, and breach of peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same: and for any speech or debate,

in either house, they shall not be questioned in any other place.

Section V.

1. No member of the Senate or General Assembly shall, during the time for which he was elected, be nominated or appointed by the governor or by the legislature in joint-meeting, to any civil office under the authority of this state, which shall have been created, or the emoluments whereof shall have been increased, during such time.

2. If any member of the Senate or General Assembly shall be elected to represent this state in the Senate or House of Representatives of the United States, and shall accept thereof, or shall accept of any office or appointment under the government of the United States, his seat in the legislature of this state shall thereby be vacated.

3. No justice of the supreme court, nor judge of any other court, sheriff, justice of the peace, nor any person or persons possessed of any office of profit under the government of this state shall be entitled to a seat, either in the Senate or in the General Assembly; but on being elected and taking his seat, his office shall be considered vacant: and no person holding any office of profit under the government of the United States shall be entitled to a seat in either house.

Section VI.

1. All bills for raising revenue shall originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills.

2. No money shall be drawn from the treasury but for appropriations made by law.

3. The credit of the state shall not be directly or indirectly loaned in any case.

4. The legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the state, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed one hundred thousand dollars, except for purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged: and no such law shall take effect until it

shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election: and all money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this state by the government of the United States.

Section VII.

1. No divorce shall be granted by the legislature.

2. No lottery shall be authorized by this state; and no ticket in any lottery not authorized by a law of this state shall be bought or sold within the state.

3. The legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

5. The laws of this state shall begin in the following style, "Be it enacted by the Senate and General Assembly of the State of New Jersey."

6. The fund for the support of free schools, and all money, stock, and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public schools, for the equal benefit of all the people of the state; and it shall not be competent for the legislature to borrow, appropriate, or use the said fund or any part thereof, for any other purpose, under any pretence whatever.

7. No private or special law shall be passed authorizing the sale of any lands belonging in whole or in part to a minor or minors, or other persons who may at the time be under any legal disability to act for themselves.

8. The assent of three-fifths of the members elected to each house shall be requisite to the passage of every law for granting, continuing, altering, amending, or renewing charters for banks or money corporations; and all such charters shall be limited to a term not exceeding twenty years.

9. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

10. The legislature may vest in the circuit courts, or courts of common pleas within the several counties of this state chancery powers, so far as relates to the foreclosure of mortgages, and sale of mortgaged premises.

Section VIII.

1. Members of the legislature, 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 Jersey, and that I will faithfully discharge the duties of senator (or member of the General Assembly, as the case may be) according to the best of my ability."

And members elect of the Senate or General Assembly are hereby empowered to administer to each other the said oath or affirmation.

ARTICLE V.

EXECUTIVE.

1. The executive power shall be vested in a governor.

2. The governor shall be elected by the legal voters of this state. The person having the highest number of votes shall be the governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the vote of a majority of the members of both houses in joint-meeting. Contested elections for the office of governor shall be determined in such manner as the legislature shall direct by law. When a governor is to be elected by the people, such election shall be held at the time when and at the places where the people shall respectively vote for members of the legislature.

3. The governor shall hold his office for three years, to commence on the third Tuesday of January next ensuing the election for governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter: and he shall be incapable of holding that office for three years next after his term of service shall have

expired: and no appointment or nomination to office shall be made by the governor during the last week of his said term.

4. The governor shall be not less than thirty years of age, and shall have been for twenty years, at least, a citizen of the United States, and a resident of this state seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this state.

5. The governor shall, at stated times, receive for his services a compensation which shall be neither increased nor diminished during the period for which he shall have been elected.

6. He shall be the commander-in-chief of all the military and naval forces of the state; he shall have power to convene the legislature whenever in his opinion public necessity requires it; he shall communicate by message to the legislature at the opening of each session, and at such other times as he may deem necessary, the condition of the state, and recommend such measures as he may deem expedient; he shall take care that the laws be faithfully executed, and grant, under the great seal of the state, commissions to all such officers as shall be required to be commissioned.

7. Every bill which shall have passed both houses shall be presented to the governor: if he approve he shall sign it; but if not he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved of by a majority of the whole number of that house, it shall become a law; but, in neither house shall the vote be taken on the same day on which the bill shall be returned to it: and 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 five 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 not be a law.

8. No member of Congress, or person holding an office under the United States, or this state, shall exercise the office of governor; and in case the governor, or person administering the government shall accept any office under the United States or this state, his office of governor shall thereupon be vacant.

9. The governor, or person administering the government, shall have power to suspend the collection of fines and forfeitures, and to grant reprieves, to extend until the expiration of a time not exceeding ninety days after conviction; but this power shall not extend to cases of impeachment.

10. The governor, or person administering the government, the chancellor, and the six judges of the court of errors and appeals, or a major part of them, of whom the governor, or person administering the government, shall be one, may remit fines and forfeitures, and grant pardons, after conviction, in all cases except impeachment.

11. The governor and all other civil officers under this state shall be liable to impeachment for misdemeanor in office during their continuance in office and for two years thereafter.

12. In case of the death, resignation or removal from office of the governor, the powers, duties, and emoluments of the office, shall devolve upon the president of the Senate, and in case of his death, resignation, or removal, then upon the speaker of the House of Assembly, for the time being until another governor shall be elected and qualified; but in such case another governor shall be chosen at the next election for members of the legislature, unless such death, resignation, or removal, shall occur within thirty days immediately preceding such next election, in which case a governor shall be chosen at the second succeeding election for members of the legislature. When a vacancy happens, during the recess of the legislature in any office which is to be filled by the governor and Senate, or by the legislature in joint-meeting, the governor shall fill such vacancy, and the commission shall expire at the end of the next session of the legislature, unless a successor shall be sooner appointed: when a vacancy happens in the office of clerk or surrogate of any county, the governor shall fill such vacancy, and the commission shall expire when a successor is elected and qualified.

13. In case of the impeachment of the governor, his absence from the state or inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve upon the president of the Senate; and in case of his death, resignation, or removal, then upon the speaker of the House of Assembly, for the time being, until the governor absent, or impeached shall return or be acquitted, or until the disqualification or inability shall cease, or until a new governor be elected and qualified.

14. In case of a vacancy in the office of governor from any other cause than those herein enumerated, or in case of the death of the

governor elect before he is qualified into office, the powers, duties and emoluments of the office shall devolve upon the president of the Senate, or speaker of the House of Assembly, as above provided for, until a new governor be elected and qualified.

ARTICLE VI.

JUDICIARY.

Section I.

1. The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require.

Section II.

1. The court of errors and appeals shall consist of the chancellor, the justices of the supreme court, and six judges, or a majority of them; which judges are to be appointed for six years.

2. Immediately after the court shall first assemble, the six judges shall arrange themselves in such manner that the seat of one of them shall be vacated every year, in order that thereafter one judge may be annually appointed.

3. Such of the six judges as shall attend the court shall receive, respectively, a per diem compensation, to be provided by law.

4. The secretary of state shall be the clerk of this court.

5. When an appeal from an order or decree shall be heard, the chancellor shall inform the court, in writing, of the reasons for his order or decree; but he shall not sit as a member, or have a voice in the hearing or final sentence,

6. When a writ of error shall be brought, no justice who has given a judicial opinion in the cause in favour of or against any error complained of, shall sit as a member, or have a voice on the hearing, or for its affirmance or reversal; but the reasons for such opinion shall be assigned to the court in writing.

Section III.

1. The House of Assembly shall have the sole power of impeaching by a vote of a majority of all the members; and all impeachments shall

be tried by the Senate: the members, when sitting for that purpose, to be on 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 all the members of the Senate.

2. Any judicial officer impeached shall be suspended from exercising his office until his acquittal.

3. Judgment in cases of impeachment shall not extend farther than to removal from office, and to disqualification to hold and enjoy any office of honour, profit or trust under this state: but the party convicted shall nevertheless be liable to indictment, trial and punishment, according to law.

4. The secretary of state shall be the clerk of this court.

Section IV.

1. The court of chancery shall consist of a chancellor.

2. The chancellor shall be the ordinary or surrogate general, and judge of the prerogative court.

3. All persons aggrieved by any order, sentence, or decree of the orphans' court, may appeal from the same, or from any part thereof to the prerogative court; but such order, sentence, or decree shall not be removed into the supreme court, or circuit court if the subject matter thereof be within the jurisdiction of the orphans' court.

4. The secretary of state shall be the register of the prerogative court, and shall perform the duties required of him by law in that respect.

Section V.

1. The supreme court shall consist of a chief justice and four associate justices. The number of associate justices may be increased or decreased by law, but shall never be less than two.

2. The circuit courts shall be held in every county of this state, by one or more of the justices of the supreme court, or a judge appointed for that purpose; and shall in all cases within the county, except in those of a criminal nature, have common law jurisdiction, concurrent with the supreme court; and any final judgment of a circuit court may be docketed in the supreme court, and shall operate as a judgment obtained in the supreme court from the time of such docketing.

3. Final judgments in any circuit court may be brought by writ of error into the supreme court, or directly into the court of errors and appeals.

Section VI.

1. There shall be no more than five judges of the inferior court of common pleas in each of the counties in this state after the terms of the judges of said court now in office shall terminate. One judge for each county shall be appointed every year, and no more, except to fill vacancies which shall be for the unexpired term only.

2. The commissions for the first appointments of judges of said court shall bear date and take effect on the first day of April next; and all subsequent commissions for judges of said court shall bear date and take effect on the first day of April in every successive year, except commissions to fill vacancies, which shall bear date and take effect when issued.

Section VII.

1. There may be elected under this constitution, two, and not more than five, justices of the peace in each of the townships of the several counties of this state, and in each of the wards, in cities that may vote in wards. When a township or ward contains two thousand inhabitants or less, it may have two justices: when it contains more than two thousand inhabitants, and not more than four thousand, it may have four justices; and when it contains more than four thousand inhabitants, it may have five justices: *provided*, that whenever any township not voting in wards contains more than seven thousand inhabitants, such township may have an additional justice for each additional three thousand inhabitants above four thousand.

2. The population of the townships in the several counties of the state and of the several wards shall be ascertained by the last preceding census of the United States, until the legislature shall provide, by law, some other mode of ascertaining it.

ARTICLE VII.

APPOINTING POWER AND TENURE OF OFFICE.

Section I.

MILITIA OFFICERS.

1. The legislature shall provide by law for enrolling, organizing and arming the militia.

2. Captains, subalterns, and non-commissioned officers, shall be elected by the members of their respective companies.

3. Field officers, of regiments, independent battalions, and squadrons, shall be elected by the commissioned officers of their respective regiments, battalions, or squadrons.

4. Brigadier generals shall be elected by the field officers of their respective brigades.

5. Major generals shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate.

6. The legislature shall provide, by law, the time and manner of electing militia officers, and of certifying their elections to the governor, who shall grant their commissions, and determine their rank, when not determined by law; and no commissioned officer shall be removed from office, but by the sentence of a court martial, pursuant to law.

7. In case the electors of subalterns, captains, or field officers, shall refuse or neglect to make such elections, the governor shall have power, to appoint such officers, and to fill all vacancies caused by such refusal or neglect.

8. Brigade inspectors shall be chosen by the field officers, of their respective brigades.

9. The governor shall appoint the adjutant general, quartermaster general, and all other militia officers, whose appointment is not otherwise provided for in this constitution.

10. Major generals, brigadier generals and commanding officers of regiments, independent battalions, and squadrons, shall appoint the staff officers of their divisions, brigades, regiments, independent battalions, and squadrons respectively.

Section II.

CIVIL OFFICERS.

1. Justices of the supreme court, chancellor, and judges of the court of errors and appeals, shall be nominated by the governor, and appointed by him, with the advice and consent of the Senate.

The justices of the supreme court and chancellor, shall hold their offices for the term of seven years; shall at stated times, receive for their services a compensation which shall not be diminished during the term of their appointments; and they shall hold no other office under the government of this state or of the United States.

2. Judges of the courts of common pleas shall be appointed by the Senate and General Assembly, in joint-meeting.

They shall hold their offices for five years; but when appointed to

fill vacancies, they shall hold for the unexpired term only.

3. The state treasurer, and the keeper and inspectors of the state prison shall be appointed by the Senate and General Assembly, in joint-meeting.

They shall hold their offices for one year, and until their successors shall be qualified into office.

4. The attorney general, prosecutors of the pleas, clerk of the supreme court, clerk of the court of chancery, and secretary of state shall be nominated by the governor, and appointed by him with the advice and consent of the Senate.

They shall hold their offices for five years.

5. The law reporter shall be appointed by the justices of the supreme court or a majority of them; and the chancery reporter shall be appointed by the chancellor.

They shall hold their offices for five years.

6. Clerks and surrogates of counties shall be elected by the people of their respective counties, at the annual elections for members of the General Assembly.

They shall hold their offices for five years.

7. Sheriffs and coroners, shall be elected annually, by the people of their respective counties at the annual elections for members of the General Assembly.

They may be re-elected until they shall have served three years, but no longer; after which, three years must elapse, before they can be again capable of serving.

8. Justices of the peace shall be elected by ballot at the annual meetings of the townships in the several counties of the state, and of the wards in cities that may vote in wards, in such manner and under such regulations as may be hereafter provided by law.

They shall be commissioned for the county, and their commissions, shall bear date and take effect on the first day of May next after their election.

They shall hold their offices for five years; but when elected to fill vacancies, they shall hold for the unexpired term only; *provided*, that the commission of any justice of the peace shall become vacant upon his ceasing to reside in the township in which he was elected.

The first election for justices of the peace shall take place at the next annual town meetings of the townships in the several counties of the state, and of the wards in cities, that may vote in wards.

9. All other officers, whose appointments are not otherwise provided for by law, shall be nominated by the governor and appointed by him with the advice and consent of the Senate; and shall hold their offices for the time prescribed by law.

10. All civil officers elected or appointed, pursuant to the provisions of this constitution shall be commissioned by the governor.

11. The term of office of all officers elected or appointed pursuant to the provisions of this constitution, except when herein otherwise [redacted] shall commence on the day of the date of their respective commissions; but no commission for any office shall bear date prior to the expiration of the term of the incumbent of said office.

ARTICLE VIII.

GENERAL PROVISIONS.

1. The secretary of state shall be ex officio an auditor of the accounts of the treasurer, and as such, it shall be his duty to assist the legislature in the annual examination and settlement of said accounts, until otherwise provided by law.

2. The seal of the state, shall be kept by the governor or person administering the government, and used by him officially, and shall be called the Great Seal of the State of New Jersey.

3. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the governor or person administering the government, and countersigned by the secretary of state, and shall run thus: "The State of New Jersey, to —— ——, greeting." All writs shall be in the name of the state; and all indictments shall conclude in the following manner, *viz:* "against the peace of this state the government and dignity of the same."

4. This constitution shall take effect and go into operation on the second day of September, in the year of our Lord, one thousand eight hundred and forty-four.

ARTICLE IX.

AMENDMENTS.

Any specific amendment or amendments to the constitution may be proposed in the Senate or General 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 making such choice, in at least one newspaper of each county, if any be published therein; and if in the legislature, next chosen, as aforesaid, such proposed amendment or amendments, or any of them, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments, or such of them as may have been agreed to as aforesaid by the two legislatures, to the people, in such manner and at such time at least four months after the adjournment of the legislature, as the legislature shall prescribe; and if the people at a special election, to be held for that purpose only, shall approve and ratify such amendment or amendments, or any of them by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments so approved and ratified shall become part of the constitution: *provided*, that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for, or against each amendment separately and distinctly; but no amendment or amendments shall be submitted to the people by the legislature oftener than once in five years.

ARTICLE X.

SCHEDULE.

That no inconvenience may arise from the change in the constitution of this state, and in order to carry the same into complete operation, it is hereby declared and ordained, that—

1. The common law and statute laws now in force not repugnant to this constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the legislature; and all writs, actions, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the state, and all charters of incorporation, shall continue, and all indictments which shall have been found, or which may hereafter be found, for any crime or offence committed before the adoption of this constitution, may be proceeded upon as if no change had taken place. The several courts of law and equity, except as herein otherwise provided, shall continue with the like powers and jurisdiction as if this constitution had not been adopted.

2. All officers now filling any office or appointment, shall continue in the exercise of the duties thereof, according to their respective commissions or appointments, unless, by this constitution it is otherwise directed.

3. The present governor, chancellor and ordinary or surrogate general, and treasurer shall continue in office until successors elected or appointed under this constitution shall be sworn or affirmed into office.

4. In case of the death, resignation, or disability of the present governor, the person who may be vice president of Council at the time of the adoption of this constitution shall continue in office and administer the government until a governor shall have been elected and sworn or affirmed into office under this constitution.

5. The present governor, or in case of his death or inability to act, the vice president of Council, together with the present members of the Legislative Council and secretary of state shall constitute a board of state canvassers, in the manner now provided by law, for the purpose of ascertaining and declaring the result of the next ensuing election for governor, members of the House of Representatives and electors of president and vice president.

6. The returns of the votes for governor, at the said next ensuing election shall be transmitted to the secretary of state, the votes counted, and the election declared, in the manner now provided by law in the case of the election of electors of president and vice president.

7. The election of clerks and surrogates, in those counties where the term of office of the present incumbents shall expire previous to the general election of eighteen hundred and forty-five, shall be held at the general election next ensuing the adoption of this constitution; the result of which election shall be ascertained in the manner now provided by law for the election of sheriffs.

8. The elections for the year eighteen hundred and forty-four shall take place as now provided by law.

9. It shall be the duty of the governor to fill all vacancies in office happening between the adoption of this constitution and the first session of the Senate, and not otherwise provided for; and the commissions shall expire at the end of the first session of the Senate, or when successors shall be elected or appointed and qualified.

10. The restriction of the pay of members of the legislature, after forty days from the commencement of the session, shall not be applied to the first legislature convened under this constitution.

11. Clerks of counties shall be clerks of the inferior courts of common pleas and quarter-sessions of the several counties, and perform the duties, and be subject to the regulations now required of them by law until otherwise ordained by the legislature.

12. The legislature shall pass all laws necessary to carry into effect the provisions of this constitution.

Done in convention, at the State House in Trenton, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-four, and of the independence of the United States of America the sixty-eighth.

ALEXANDER WURTS,
President of the Convention.

WILLIAM PATERSON, *Secretary.*
TH: J. SAUNDERS, *Assist. Sec'y.*

WARREN.
P. B. Kennedy,
Samuel Hibbler,
Robert S. Kennedy.

SOMERSET.
P. D. Vroom,
Ferdinand S. Schenck,
George H. Brown.

HUNTERDON.
Jonathan Pickel,
David Neighbour,
Peter I. Clark.

MIDDLESEX.
Moses Jaques,
James Parker,
Jos. F. Randolph,
James C. Zabriskie.

MERCER.
Jno. R. Thomson,
Henry W. Green,
R. S. Field.

MONMOUTH.
George F. Fort,
Bernard Connolly,
Thomas G. Haight,
Daniel Holmes.
[Laird's name is not in the Journal's list, but it does appear on the original document on file in Trenton.]

BURLINGTON.
Moses Wills,
J. J. Spencer,
Wm. R. Allen,
Jno. C. Ten Eyck,
Chas. Stokes. [Excused from voting, but signed.]

CAMDEN.
John W. Mickle,
Abraham Browning.

GLOUCESTER.
Jno. R. Sickler,
Charles C. Stratton.

ATLANTIC.
Jonathan Pitney.

BERGEN.
John Cassedy,
Abr. Westervelt.

HUDSON.
Robt. Gilchrist.

PASSAIC.
Elias B. D. Ogden,
Andrew Parsons.

SUSSEX.
Joseph E. Edsall,
John Bell,
Martin Ryerson.

ESSEX.
Jos. C. Hornblower,
D'd. Naar,
O. S. Halsted,
Elias Vanarsdale,
Wm. Stites.
[Williamson was ill, and Condit refused to sign.]

CAPE MAY.
Joshua Swain.

MORRIS.
Mahlon Dickerson,
Francis Child,
Ephraim Marsh,
W. Nelson Wood.

SALEM.
Jno. H. Lambert,
Richard P. Thompson,
Alex'. G. Cattell.

CUMBERLAND.
Wm. Belford Ewing,
Joshua Brick,
Daniel Elmer.

NEW JERSEY, *ss.*

Be it remembered, that on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-four, the above constitution was delivered to the governor of this state, in open convention, by the president thereof; and it is thereupon, by the said governor, ordered and directed that the same be filed in the office of the secretary of state.

DAN'L. HAINES, Gov. of N. J.

STATE OF NEW JERSEY, *ss.*

The within constitution was delivered by His Excellency Daniel Haines, governor of this state, to me, in open convention, and is, by his order, filed in my office this 29th June, 1844.

CHARLES G. McCHESNEY,
Secretary of State.

A true copy.
CHARLES G. McCHESNEY, *Sec'y of State.*

PROCLAMATION

By Daniel Haines, Governor of the State of New Jersey.

WHEREAS, by an act of the legislature of the State of New Jersey, entitled, "An act to provide for the election of delegates to a convention to prepare a constitution for the government of this state, and for submitting the same to the people thereof, for ratification or rejection," passed the 23d day of February, A. D. 1844, it is provided, "That as soon as the said constitution shall have been deposited in the office of the secretary of state, it shall be the duty of the governor of this state for the time being to cause the same to be published in each of the newspapers printed in this state, for the space of six weeks, successively, at least once in each week, for the information of the people."

And whereas, the constitution agreed upon by the said convention has this day been delivered to me, in open convention, by the president thereof, and by my direction deposited and filed in the office of the secretary of state, in the words and figures following, that is to say:

(Here follows the constitution, as before printed, omitting the names of the delegates.)

Now, therefore, I, DANIEL HAINES, Governor of the State of New Jersey, have caused, and by these presents do cause, the said Constitution to be published, pursuant to the direction of the said act.

* * * * * *
* L.S. *
* * * * * *

Given under my hand and privy seal, at the city of Trenton, this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-four.

DANIEL HAINES.

Statement of votes given, in the several counties of the state, for and against the adoption of the constitution, at an election held on the thirteenth day of August, in the year of our Lord one thousand eight hundred and forty-four.

COUNTIES	Constitution	No Constitution	Rejected ballots
Atlantic,	366	17	
Bergen,	644	15	
Burlington,	1272	99	5
Camden,	477	68	2
Cape May	115	14	
Cumberland,	532	42	8
Hudson,	268	28	1
Essex,	2759	300	2
Gloucester,	294	145	14
Hunterdon,	2231	376	3
Mercer,	1155	369	2
Middlesex,	907	145	
Monmouth,	1225	188	6
Morris,	1425	569	6
Passaic,	884	20	
Salem,	648	331	3
Somerset,	1303	304	7
Sussex,	2059	16	9
Warren,	1712	480	1
	20,276	3526	69

RECAPITULATION.

Constitution,	20,276
No Constitution,	3,526
Rejected ballots,	69
Whole number of votes,	23,871
Majority for Constitution,	16,750

A true copy from the statement of the board of state canvassers, now on file in my office.

CHARLES G. McCHESNEY, *Sec'y of State.*

Biographies of Delegates

Biographies of Delegates

WILLIAM RIDG ALLEN (Jan. 18, 1798-Nov. 18, 1863), W. and R., B., b. Mount Holly, l. Burlington; apprentice tanner, farmer; common council 1824-6, 1827-9, 1851-2; alderman 1829; assembly 1831-2 (favored charter for Camden and Amboy R. R. and was one of commissioners for N. J. R. R.); recorder 1833-42; freeholder 1838-43, 1852, 1855; mayor 1842-51, 1857-63; j. p. 1845; sup. schools 1854-6; for many years schools and library trustee, interested in education of Negroes and strong Abolitionist; 1st pres. Mechanics Nat'l Bank 1839-63.

JOHN BELL (Jul. 9, 1791-Aug. 4, 1856), W., l. Newton (?); general store at Stanhope; freeholder 1832; common pleas for many years after 1833; held some local offices but frequently defeated in elections; council 1839.

JOSHUA BRICK (Mar. 22, 1779 (?)-May 24, 1860), W., M., b. Bricksboro, l. Port Elizabeth; apprentice tanner, farmer, real estate, lumber and glass interests; council 1836; j. p. and common pleas, but refused to attend court; for a time South Jersey "boss" of Whigs; Errors and Appeals 1845-46; proposed for Congress and U. S. Senate, but did not run.

GEORGE HOUSTON BROWN (Feb. 10, 1810-Aug. 1, 1865), W., Re., b. Lawrenceville, l. Somerville; e. Princeton, Yale Law; lawyer; council 1842-4; senate 1845; cand. W. gubernatorial nomination 1850 and 1853; Congress 1851-3; St. Sup. Ct. 1861-5; fought against holding Convention without a referendum.

ABRAHAM BROWNING (Jul. 26, 1808-Aug. 22, 1889), pro-slavery W., D. after 1860, E., b. nr. Camden, l. Camden; e. Yale Law; lawyer, authority on constitutional and r.r. litigation; att. gen. 1845-50; freeholder 1851-2; defeated by a few votes for U. S. Senate 1859; off. 2 tpks., 2 r.r.s, Farmers and Mechanics Bank of Camden, Camden Water Works; delivered oration on Jersey Day at 1876 Philadelphia Exposition.

JOHN CASSEDY (1797-?), D.; "gentleman"; assembly 1837, 1838; v.p. of council 1842; unsuccessful for party nomination for governor 1844, 1847, 1850, 1853; senator from Hudson 1850.

ALEXANDER GILMORE CATTELL (Feb. 12, 1816-Apr. 8, 1894), W. and R., P. (?), b. Salem, l. Phila., Merchantville (1855); mer-

chant, banker; assembly 1840; clerk of house 1842-3; Phila. city council 1848-53; worked with Sec. Chase in formulation of Nat'l Banking Act; U. S. Senator (N. J.) 1866-71, voting for impeachment of Pres. Johnson; app. 1st Civil Service Comm. by Grant 1871-3; helped refund U. S. bonds in Eng. 1873; pres. St. Bd. Assessors and St. Bd. Ed.; 1st pres. Corn Exchange Bank (Phila.) 1857-71; org. N. J. Trust and Safe Deposit Co. (Camden) 1885.

FRANCIS CHILD (1793 (?)-Dec. 1856 or Jan. 1857), D., l. Morristown; farmer; common pleas for a number of years; "though abundantly qualified by talents and education for public life, we believe he never sought it."

PETER I. CLARK (1790-May 26, 1863), W. and Const. Union, P., b. New Brunswick, l. Flemington; e. Princeton; lawyer; council; county clerk; common pleas; del. to 1860 conv. of Const. Union party; col. in militia; trustee St. Normal School; pres. co. Bible soc. 1846-9; leader church choir 1841-57.

SILAS CONDIT (1777-Dec. 28, 1861), W., l. Newark (?); banker, "gentleman"; assembly 1812-13, 1816; Congress 1831-3; org. 1st bank in st., Newark Banking and Insurance Co. (1804) and pres. 1820-42.

BERNARD CONNOLLY (Dec. 1804-June 1880), D., R. (1856-1872), M. (?), b. Westmoreland, Pa. (?), l. Princeton (1825), Freehold (1834); printer, pub. Princeton Courier (1831-4) and Monmouth Democrat (1834-54); assembly 1851; several st. appointive jobs; N. Y. Custom House; defeated for local office several times; prolific letter writer during campaigns.

MAHLON DICKERSON (Apr. 17, 1770-Oct. 5, 1853), D., b. Hanover Neck, l. Morristown, Phila. (1796), Succasunna (1810); e. Princeton; lawyer, ironmaster; Phila. common council 1799; fed. comm. of bankruptcy 1802; Pa. adjutant general 1805-8; Phila. recorder 1808; N. J. assembly 1811-12, 1833; St. Sup. Ct. 1813-15; gov. 1815-17; U. S. Senate 1817-33; declined appointment as minister to Russia 1834; sec. Navy 1834-8; U. S. Dist. Ct. 1840-1; owned Succasunna Iron Mines.

JOSEPH E. EDSALL (1788 (?)-Feb. 17, 1865), D., b. N. Y. St. (?), l. Hamburg; iron mfg.; common pleas, etc. 1825; county clerk 1831-41; Congress 1845-9; col. in militia; com. Hudson and Delaware R. R.; off. Hamburg Manufactures Co.

DANIEL ELMER (Sept. 30, 1784-Jul. 3, 1848), W., P. (?), b. Cedarville, l. Bridgeton; lawyer; St. Sup. Ct. 1841-4; gen. in militia; pres. Cumberland Bank (1825-41).

WILLIAM BELFORD EWING (Dec. 12, 1776-Apr. 23, 1866), W., D. (by 1844), R., P., b. and l. Greenwich; e. Princeton, Pa. U.; physician (to 1824), farmer; assembly 1819-23, 1825-28, 1830 (speaker 1827-8); freeholder (21 years); j. p. 1833, 1838, 1843; common pleas 1838, 1843; pres. St. Med. Soc. 1824; capt. in militia.

RICHARD STOCKTON FIELD (Dec. 31, 1803-May 25, 1870), W. and R., E., b. White Hill, l. Princeton; e. Princeton; lawyer; assembly 1833-4, 1837; att. gen. 1838-41; U. S. Senate 1862-3; U. S. Dist. Ct. 1863-70; prof. Princeton Law 1847-55; pres. St. Normal School 1855-70; pres. N. J. Hist. Soc. 1869-70; pres. Princeton Bank 1839-49, 1852; pres. Princeton Gas Light Co.; dir. Joint Cos. (Camden and Amboy R. R., Delaware and Raritan Canal); numerous addresses and publications.

GEORGE FRANKLIN FORT (May 1809-Apr. 22, 1872), D., M., b. Pemberton, l. New Egypt; e. Pa. U.; physician; assembly 1844; senate 1846-8; gov. 1851-4; Errors and Appeals 1863-71; prison reform com.; auth. "Early History and Antiquities of Freemasonry."

ROBERT GILCHRIST (1789-Jul. 11, 1866), W., Re., b. Armagh, Ireland, l. Jersey City (c. 1810); lawyer (?); e. Dublin U. (?); city clerk 1826-8; pres. common council 1835; county clerk 1840-65; mayor 1850-1; dir. Morris Canal Co.

HENRY WOODHULL GREEN (Sept. 20, 1804-Dec. 19, 1876), W. and R., P., b. Lawrenceville, l. Trenton; e. Princeton, Litchfield Law; lawyer; recorder 1832; chancery reporter 1837-44; assembly 1842; statute rev. bd. 1845; ch. j. St. Sup. Ct. 1846-60; chancellor 1860-6; declined U. S. ch. j. 1864 because of ill health; trustee Princeton Theol. Sem. 1833-76 (pres. 1860-76) and college 1850-76; org. Mechanics Bank and Trenton Savings Soc.; nominated Frelinghuysen for v. p. at Whig conv. 1844.

THOMAS GRIFFITH HAIGHT (Nov. 10, 1790-Sept. 2, 1847), D., Re., b. and l. Colt's Neck; e. Princeton; farmer; assembly 1831-7 (speaker 1836); considered for nomination as gov. at time of death.

OLIVER SPENCER HALSTED (Sept. 22, 1792-Aug. 29, 1877), W., D., Greenbacker, P., b. Elizabeth, l. Newark; e. Princeton, Litchfield Law; lawyer; assembly 1823-5, 1827; surrogate 1828; council 1834-6; recorder 1836; mayor 1840; chancellor 1845-52; auth. several Biblical works.

SAMUEL HIBBLER (1800 (?)-c. Sept. 1844), D.; painter.

DANIEL HOLMES (Dec. 27, 1792-Oct. 27, 1851), D., B. (?), b. and l. Holmdel; farmer, storekeeper; assembly ("several times"); sheriff 1828; council 1832.

Joseph Coerten Hornblower (May 6, 1777-Jun. 11, 1864), W. and R., P., b. Belleville, l. Newark; lawyer; assembly 1829; ch. j. St. Sup. Ct. 1832-46; pres. N. J. Electoral Col. 1860; prof. Princeton Law 1847; 1st pres. N. J. Hist. Soc. 1845-64; org. Am. Bible Soc.; pres. Soc. for Promoting Collegiate and Theol. Ed. in West; pres. N. J. Colonization Soc.

Moses Jaques (Nov. 7, 1770-Aug. 15, 1858), D., b. Rahway, l. Phila., N. Y. C., Woodbridge (1837); physician, merchant, farmer, property owner; assembly 1800.

Phineas B. Kennedy (1802 (?)-May 17, 1868), D., P.; lawyer; cand. for gov. 1853; col. in militia.

Robert S. Kennedy (Oct. 10, 1802-Mar. 20, 1879), W. and R., P., b. and l. Stewartsville; farmer; j. p.; common pleas (many years); U. S. Marshal 1848-52; Errors and Appeals 1860-72; active in church affairs; trustee Lafayette College.

Robert Laird (Sept. 5, 1811-Apr. 22, 1903), D., P., b. Freehold, l. Manasquan; e. Berkshire Med. Col.; physician; senate 1855-7; pres. twp. com.; twp. sup. schools (15 years); master in chancery; pres. Masonic Mutual Life Ins. Assn.

John H. Lambert (1799-1868), D., l. Alloway (1836), Quinton (1849); merchant, farmer; held a number of offices, incl. town counsel, council, common pleas; com. Alloways Creek Navigation Co.; org. Quinton Glass Co.

Ephraim Marsh (Oct. 1, 1796-Aug. 28, 1864), W. and R., b. Mendham, l. Schooley's Mt. (1816); businessman; assembly 1828-30; common pleas (many years); senate 1848-50 (pres. 1849-50); pres. Fillmore conv. 1856; owner Schooley's Mt. resort; pres. Morris Canal Co. (1848-64).

John Whitall Mickle (1793-Nov. 10, 1861), D., b. and l. Camden; mariner, entrepreneur; freeholder; assembly; council; frequent conv. del. and elector; officer 3 r.rs., 3 tpks., Camden Water Works, ferry co., fire ins. co.

David Naar (Nov. 10, 1800-Feb. 24, 1880), D., Heb., b. St. Thomas, Danish W. I., l. N. Y. C. (1834), Elizabeth (1838), Trenton (1853); e. U. S.; merchant, mfr., farmer, publisher; several mil. and pol. offices at St. Thomas; mayor of Elizabeth 1843; common pleas 1843; U. S. consul at St. Thomas 1845-8; recorder and borough council *c.* 1849; assembly clerk 1851-2; school board 1854-5, 1861-2, 1866, 1868; city council 1869-71; freeholder; St. Treasurer 1865-6; Sec. St. Sinking Fund 1868-80; pub. *Trenton True American* 1853-69; 1st pres. N. J. Editorial Assn.; active in agricultural and Masonic affairs.

David Neighbour (Nov. 25, 1797-Apr. 21, 1892), D., P., b. German Valley, l. there and vicinity, N. Y. C. (1859-67); storekeeper; assembly 1837-8; Lebanon Twp. Com. 1841-3; twp. treas. (13 years).

Elias Bailey Dayton Ogden (May 22, 1800-Feb. 24, 1865), D., E., b. Elizabeth, l. Paterson, Elizabeth (1858); e. Princeton; lawyer; prosecutor 1837-9; assembly (two terms); town committee 1846; St. Sup. Ct. 1848-65; off. Paterson and Hudson River R. R., Passaic Tpk. Co., pres. Peoples' Nat'l Bank; treas. Society for Establishing Useful Manufactures; trustee Burlington College.

James Parker (Mar. 1, 1776-Apr. 1, 1868), F., D., W. and R., E., b. Bethlehem, l. Perth Amboy; e. Columbia; merchant (1794-7), landowner; assembly 1806-14, 1815-19, 1827; boundary com. 1806, 1827, 1829; collector port of Perth Amboy 1829-33; congress 1833-7; mayor (many years); dir. Delaware and Raritan Canal 1830-68; trustee Princeton (1825-9) and Rutgers; pres. N. J. Hist. Soc. 1865-8; auth. of act for free school fund; strong abolitionist.

Andrew Parsons (1791- ?), W., b. abroad, l. Passaic; merchant, banker; council 1837-8; twp. com. 1847; off. Paterson Bank, Passaic Tpk. Co., Paterson Gas Light Co.; prominent party worker.

Jonathan Pickel (Oct. 2, 1798-Feb. 7, 1869), D., P., b. (?) and l. Mt. Pleasant; farmer; assembly c. 1840 (three terms); common pleas (10 years); inspector St. prison.

Jonathan Pitney (Oct. 29, 1797-Aug. 7, 1869), D., P., b. Mendham, l. Absecon; e. Columbia Med.; physician; freeholder 1836; postmaster (many years); cand. for congress 1848; cand. D. gubernatorial nomination 1850; fought successfully for creation of Atlantic Co., construction of Camden and Atlantic R. R., founding of Atlantic City and erection of Absecon Lighthouse; pres. co. Bible Soc.

Joseph Fitz Randolph (Mar. 14, 1803-Mar. 19, 1873), W., Am., R., D. (1858), P., b. N. Y. C., l. Freehold (1836), New Brunswick (1843), Trenton (1845), Jersey City (1864); lawyer; prosecutor c. 1836; Congress 1837-43; St. Sup. Ct. 1845-52; statute rev. com. 1854.

Martin Ryerson (Sept. 16, 1815-Jun. 11, 1875), D., R. (c. 1854), P.; b. Hamburg, l. Newark, Newton; e. Princeton; lawyer; assembly 1849; St. Sup. Ct. 1855-8; *Alabama* claims judge 1873-5; trustee Newton Collegiate Inst.; temperance worker; because of anti-slavery feeling, became active R. worker; Hon. LL.D. Princeton 1869; appointed to constitutional comm. of 1873, but resigned because of ill-health.

FERDINAND S. SCHENCK (Feb. 11, 1790-May 15, 1860), W. and R., b. and l. Six Mile Run; physician; assembly 1829-31; Congress 1833-7; Errors and Appeals 1845-53; cand. st. senate 1856; trustee Rutgers; banking and manufacturing interests.

JOHN ROWAN SICKLER (Sept. 20, 1800-Apr. 11, 1886), D., E., b. Chew's Landing, l. Mantua; e. Jefferson Med. Col.; physician; j. p. 1825; common pleas 1828, 1844, 1852, 1857, 1862 (23 years); freeholder 1859-62, 1869-71; school trustee many times; pres. N. J. Med. Soc. 1859; ardent Copperhead.

JONATHAN J. SPENCER (Aug. 18, 1792-Apr. 6, 1857), W., E., l. Moorestown; physician, farmer; Errors and Appeals 1845-9; dir. Mt. Holly Ins. Co., Farmers' Trust Co. (Mt. Holly).

WILLIAM STITES (Dec. 1807-Dec. 1893; these dates from a tombstone in Hillside, while papers of time gave age as 52 in 1844), W.; merchant; assembly (speaker 1839).

CHARLES STOKES (Aug. 12, 1791-Feb. 27, 1882), D., Q., b. and l. Beverly; farmer, surveyor; freeholder 1827-31, 1834-45; twp. recorder (c. 20 years); twp. com.; assembly 1830; council 1835-6; master in chancery 1836; dir. Mt. Holly Ins. Co.; auth. numerous phil. essays and historical sketches.

CHARLES CREIGHTON STRATTON (Mar. 6, 1796-Mar. 30, 1859), W., E., b. and l. Swedesboro; e. Rutgers; farmer, mfr.; assembly 1821-3, 1828; Congress 1837-9, 1841-3; gov. 1845-8; lt. col. in militia.

JOSHUA SWAIN (Feb. 2, 1778-Aug. 24, 1855), W., B., b. and l. nr. Townsend's Inlet; farmer, boatbuilder; sheriff 1809-12; assembly 1813-14; council 1815-19, 1823-4, 1825-7; assembly 1852.

JOHN CONOVER TEN EYCK (Mar. 12, 1814-Aug. 24, 1879), W. and R., P., b. Freehold, l. Mt. Holly; lawyer; prosecutor 1839-49; U. S. Senate 1859-65; ch. const. com. 1873.

RICHARD PARROT THOMPSON (Mar. 11, 1805-Nov. 8, 1859), D., E., b. and l. Salem; lawyer; assembly clerk 1835; prosecutor; att. gen. 1844-5, 1852-7.

JOHN RENSHAW THOMSON (Sept. 25, 1800-Sept. 12, 1862), D., E., b. Phila., l. Princeton; e. Princeton; "gentleman"; merchant in China trade; U. S. consul at Canton; cand. for gov. 1844; U. S. Senate 1853-62; dir. and sec. Delaware and Raritan Canal and Joint Cos. 1830-62.

ELIAS VANARSDALE (Dec. 13, 1770-Mar. 19, 1846), D., b. Freehold, l. Newark; e. Princeton; lawyer; pres. State Bank 1812-46.

PETER D. VROOM (Dec. 12, 1791-Nov. 18, 1874), D., Re., b. Hillsborough, l. Somerville, Trenton (1840); e. Columbia; lawyer;

prosecutor (Hunterdon); assembly 1826-7, 1829; gov. 1829-32, 1833-6; Congress 1839-41; statute rev. com. 1845; declined ch. j. St. Sup. Ct. 1848; minister to Prussia 1853-7; trustee Rutgers; off. Am. Colonization Soc., Am. Bible Soc.

ABRAHAM WESTERVELT (1794-Mar. 18, 1863), W., Re., l. Hackensack; wealthy "gentleman"; common pleas clerk 1833, judge 1840, 1846.

ISAAC HALSTEAD WILLIAMSON (Sept. 27, 1767-Jul. 10, 1844), F. and W., b. and l. Elizabeth; lawyer; prosecutor (Morris); assembly 1816-17; gov. 1817-29; mayor 1830-3; council 1831-2.

MOSES WILLS (Dec. 17, 1792-Nov. 3, 1873), D., Q., b. Mt. Holly, l. Columbus; merchant; assembly 1835-6; freeholder 1846-7; Errors and Appeals 1851-7; pres. Mt. Holly Bank 1857-73; dir. Mt. Holly Ins. Co. 1831-73, Farmers' Bank.

WILLIAM NELSON WOOD (1805 (?)-Jul. 25, 1865), W., E., b. and l. Morristown; lawyer; surrogate 1833-43; Errors and Appeals 1857-65; inc. Morris and Essex R. R., Morristown Gas Light Co.

ALEXANDER WURTS (1799-Feb. 16, 1881), D., b. Flanders, l. Flemington; e. Princeton; lawyer; assembly 1824, 1828-31 (speaker 1829-31); council 1833; senate 1845-6, 1865-7; declined ch. j. St. Sup. Ct. 1853; common pleas 1877-81; pres. St. Asylum bd. 1859-81.

JAMES C. ZABRISKIE (1804-Jul. 10, 1883), D., Re., P., b. Hackensack, l. New Brunswick, Sacramento, Cal. (1849), San Francisco (1861); tailor, incorporator Farmers' and Mechanics Bank, New Brunswick; lawyer; alderman 1834-8; city attorney Sacramento; auth. "Public Land Laws of the United States"; colonel in N. J. militia.

Messrs. Field, Halsted, Hornblower and John R. Thomson had been among the 50 delegates to an unofficial convention which met in Trenton in 1827 "pursuant to public notice published in most of the newspapers of the State, for the purpose of taking preparatory measures to bring the subject of a revision of the State Constitution properly before the people."—*Sentinel of Freedom*, August 28, 1827.

Abbreviations

Am.—American Party
B.—Baptist
b.—born
D.—Democrat
E.—Episcopalian
e.—educated
F.—Federalist
Heb.—Hebrew
l.—lived
M.—Methodist
P.—Presbyterian
Q.—Quaker
R.—Republican
Re.—Reformed.
W.—Whig

Indexes

Note

For easier reference the index has been divided into two sections: (1) a general topical index, and (2) a name index of the delegates and others mentioned, quoted or discussed during the course of the proceedings. The eight major topics with which the convention was concerned, and for consideration of which the convention was divided into committees, are printed in SMALL CAPITALS both alphabetically and under "Votes" in the general index. Boldface numerals under "Votes" indicate a roll call. In the name index the names of the delegates are printed in SMALL CAPITALS.

General Index

NOTE: This Index is designed to assist the student by topical cross-references to the work of the several committees as they touched upon common problems. For example, the general heading *Elections* includes cross-reference to the discussions of the reports of the committees on the Executive, Suffrage, and Miscellaneous Items where the subject came up for attention.

Names of the eight major convention committees are printed in SMALL CAPITALS.

All votes on motions are indexed under **VOTES.**

Alabama, 157, 170, 218
Albany, 244
Amboy, 245, 268
AMENDMENT
  Committee, 31-2;—report, 39;—draft, 629-30
  Debate, 54-75, 131, 573-9, 594-5; Bill of Rights, 594; constitutional convention, 69-75, 577-9; percent of legislature to amend, 54-70, 71-3; submission to people, 74-5
Anti-Irish riots, 67
APPOINTING POWER
  Committee, 31;—report, 271-4;—drafts, 587-9, 593-4, 599-600
  Debate, 131, 132, 135, 217, 226, 274-5, 289, 303-7, 309, 347-64, 367-89, 481-510, 523-4, 593-4, 626-9; civil officers, 272-4, 475, 502-10, 603; joint meeting, 274, 275, 348-64, 367-79, 381-4, 389, 482-4, 485-95, 499-502, 504, 509; judiciary, 348-64, 384-9, 485-510, 523, 524; militia, 347-8, 481-5; tenure, 496-7; U. S. senators, 510; vacancies, 504
Arkansas, 68, 129, 157, 178, 218, 281
Assembly (see LEGISLATURE)
Bail, 157
Baltimore convention, 353
Banks (see LEGISLATURE, special privileges)
Biennial Sessions (see LEGISLATURE, term)
BILL OF RIGHTS (see also AMENDMENT)
  Committee, 32;—report, 51-3;—draft, 583-4, 614-6
  Debate, 139-48, 152-72, 409-29, 589-92; bail, 157; double jeopardy, 142-4, 152-7, 412-3, 590; eminent domain, 159-61, 414-8, 591-2 (see also under LEGISLATURE); freedom of speech, 52, 142-148, 303, 459-60, 590, 614, 615; imprisonment for debt, 161-68, 418-21, 423-9; juries, 142-8, 152-7, 171, 172, 457-60; libel, 143-8; natural rights, 409-11, 454-6; religious liberty, 141, 142; vested rights, 157-9, 311
Blackstone's Commentaries, 409, 454
Bribery at elections (see SUFFRAGE, bribery)
Burlington, 6, 268
Canals (see Internal improvements)
Carter case, 157
Census, 29, 43, 70, 275
Chancellor (see APPOINTING POWER, civil officers; EXECUTIVE, court of pardons; JUDICIARY, chancery)
Charters (see LEGISLATURE, special privileges)
Checks and Balances (see Distribution of powers)
Circuit Court (see JUDICIARY, supreme court)
Citizenship (see SUFFRAGE, citizenship)
Civil Officers (see APPOINTING POWER)
Committees, 30-2; committee to draft address, 574-5, 582, 603, 605; committee on expenses, 496, 608-609, (see also AMENDMENT, APPOINTING POWER, BILL OF RIGHTS, EXECUTIVE, JUDICIARY, LEGISLATURE, MISCELLANEOUS PROVISIONS and SUFFRAGE)
Common law (see Law), 390-2, 407, 408
Connecticut, 61, 406
Constitution of 1776, 1-6 (text), 19, 21, 27-8, 32, 33, 58-9, 64, 80-1, 86, 100, 105-6, 121, 124, 129-2, 134, 135, 139, 171, 172, 201, 227, 231, 232, 245, 274, 289, 290, 293, 334, 348-9, 353, 369, 390, 441-2, 483-4, 494-5
Constitution of 1844: 34, adoption by convention, 605-7;—by popular vote, 636;

final form, 613-33; governor's proclamation, 635; preliminary draft, 583-600; signature, 606, 607, 608, 609-10; signed, 632-3
Constitution (U. S.), 32, 55-58, 60, 61, 62, 64, 83-7, 105, 109, 110, 139, 140, 141, 154, 170-1, 172, 178, 179, 180, 183, 186, 187, 188, 192-3, 194, 200-1, 202, 205, 206, 302, 303, 306, 311, 325, 389, 442, 494, 541
Constitutional conventions, 21, 22, 32, 59, 62, 69-71, 73-5, 577-9
Contracts (see LEGISLATURE, contracts)
Convention: act for election of delegates, 7-11; guests of, 31, 38; officers, 17-8
Corporations (see LEGISLATURE, special privileges)
Council, 226, 348-51 (see also JUDICIARY, court of errors and appeals; LEGISLATURE, Senate)
Counties (see LEGISLATURE)
Court of Errors and Appeals (see JUDICIARY)
Court of Pardons (see EXECUTIVE)
Court of Reconciliation, 172-4, 337-8, 407-8, 579-580 (see also Denmark, Mexico)
Courts (see JUDICIARY, England, Denmark, Mexico)
Croswell cases, 144-6
Declaration of Independence, 109, 409
Delaware, 61, 66, 126, 129, 130, 132, 137, 218, 317-8, 319
Delaware and Raritan Canal Company, 64 (see Internal improvements)
Delegates: contingent expenses of, 595; list of, 15-17
Democrats (see Politics)
Denmark, 172-3, 174, 337-8
Distribution of powers, 179-205, 207-13, 214, 229, 232, 236-7, 308, 348-64, 367-84, 390, 450, 467, 482-96, 591, 616
Divorces (see LEGISLATURE)
Dorr Rebellion, 58
Double Jeopardy (see BILL OF RIGHTS)
East Jersey (see Jerseys)
Education (see LEGISLATURE, school fund)
Elections, 7-11, 111, 116-38, 175, 219-21, 224, 294-6, 392-3, 395, 436-44, 451-3, 502, 504, 553-4, 588-9, 591 (see also EXECUTIVE, SUFFRAGE and MISCELLANEOUS PROVISIONS)
Elizabeth Borough, 257
Elizabethtown, 380
Elmer's *Digest*, 394, 395
Eminent Domain (see BILL OF RIGHTS and LEGISLATURE)
England, 58, 96, 109, 130, 144, 145, 147, 160, 170, 186, 191, 196, 200, 201, 215, 227, 244-5, 266-7, 309, 312, 324, 457, 468-9 (see also Great Britain and Parliament)
EXECUTIVE (see also APPOINTING POWER)
Committee, 31;—report, 44-6;—draft, 585-6, 598-9
Debate, 131, 174-226, 481, 553, 555-6, 593, 600, 621-4; court of pardons, 207-13, 214, 221-2, 224-5, 450-1; election, 131-8, 175, 224, 451-3, 553; eligibility, 214-8, 445-8; impeachment, 214, 219, 239, 586, 600; qualifications, 175, 446-8, 481, 553; residence, 223-4; term, 131-8, 175, 214, 225-6, 445; vacancies, 218-21, 392-3, 553, 555-6; veto, 175-207, 448-50
Expenses, 36, 50, 496, 597, 607-9
Ex post facto (see retrospective laws), 157-8
Federalist, The, 202
Fisheries, petition, 481
Forcelosure, 476-7, 567-8
France, 201, 324
Georgia, 280, 281
Governor, proclamation of, 635 (see also EXECUTIVE)
Great Britain, 1, 102, 160, 173, 186, 194-5, 196, 200, 201, 215, 266-7, 274, 309, 457, 468-9
Greece, 64
Harrisburgh, 244
Highways (see Internal improvements)
Holdover officers, 392
Illinois, 157, 162, 178, 280, 281
Impeachment, 214, 219, 238-9, 274-5, 586, 600
Imprisonment for Debt (see BILL OF RIGHTS)
Indiana, 157, 162, 178
Internal improvements, 64, 126, 133, 159-61, 310-15, 320-3, 329, 340-3, 414-18, 519-22, 525-7, 528, 538, 568-70, 597-8, 602
Isle of Man, 160
Jerseys: East—242, 243, 244-6, 267, 269; West—66, 242, 243, 244-5, 267, 269, 458
Joint Meeting (see APPOINTING POWER)
Journal of convention, 33, 422, 522-3, 580-1, 602, 606, 607-8
JUDICIARY
Committee, 31;—report, 148-52;—draft, 586-7
Debate, 172-4, 189-90, 221-2, 224-71, 292, 337-8, 348-50, 361-4, 377-89, 407, 408, 454-80, 485-504, 508-10, 523-24, 579-580, 593, 603, 624-6; appointment, 348-64, 379-89, 485-10, 523, 524; chancery, 239-41, 475; chief justice, 239; common pleas, 152, 254, 264, 479, 518; cost, 232, 237, 246; court of errors and appeals, 226-37, 460-74; court of reconciliation, 172-4, 337-8, 407-8, 579-80; history, 245; justices of the peace, 254-64, 479-80, 508-10; orphans' court, 150, 247-54, 475, 477-9, 505-8; prerogative court, 150; supreme court, 242-7, 264-70, 475-7
Juries (see BILL OF RIGHTS)
Justices of the peace (see APPOINTING POWER, civil officers; JUDICIARY; VOTES, Judiciary.
Kentucky, 157, 162
King:—*vs.* Dean of St. Asaph, 147;—*vs.* Edwards, 413
Law, 126, 142-8, 152-9, 171-2, 197, 407-8, 454-60, 552, 573, 600
Legislation, 126, 127, 128, 133, 136, 170, 179-82, 197-200, 203-5, 241, 277-9, 457
LEGISLATURE (see also APPOINTING POWER and SUFFRAGE)
Committee, 31;—report, 111-16;—draft, 583-9, 598
Debate, 54-69, 71-5, 103-5, 107-9, 111, 124-138, 157-9, 180, 185, 203, 276-348, 363, 400-7, 510-22, 524-52, 554-70, 591-3, 595, 597-8, 602, 604-6, 616-21
Powers and limitations—appointments, 303-7, 309, 517-19; contracts, 157, 336, 546-8, 554-5, 592-3; counties, 64, 307-8, 332-6, 339-40, 542-5, 604; divorces, 136, 336, 545; eminent domain, 159-61, 312, 527-8, 568-70 (see also under BILL OF RIGHTS and Internal improvements); foreclosure, 567-8; lotteries, 336, 545-6; percent to amend, 54-69, 71-3; revenue bills, 309-10; school fund, 102, 126, 337, 345-7, 400-7, 550-2; 566-7, 585; special privileges, 64, 157-9, 180, 311-32, 336, 343-5, 527-42, 556-66, 597-8, 602; state credit, 64, 310, 520, 525-7; state debt, 135, 185, 203, 277, 310-11, 340-3, 519-22, 524-7, 595; taxation, 343-4; trusteeship, 547, 548-50, 5[illegible]
Organization and operation—constitution of, 64-6, 283-7, 296-7, 363, 512-13, 532-3, 605-6; cost, 276-7, 278-9, 514; counties (see under Powers and limitations); oath, 338-9; pay, 297-300, 514-17, 554; privileges, 301-3; property qualifications, 107-9; rules, 297; term, 111, 134-38, 276-82, 287-96, 444, 511-12, 513; vacating previous offices, 309, 518, 519 (see also AMENDMENT, Debate)

Libel (see BILL OF RIGHTS)
Librarian, 31, 608
Lotteries, 336, 545-6
Louisiana, 82, 178
Magna Charta, 236
Maine, 61, 94, 178
Maryland, 61, 71-2, 210, 242, 269
Massachusetts, 61, 62, 109, 401, 402, 403, 406, 458, 528, 535
Maysville Road Bill, 195
Mexico, 172-3
Michigan, 62, 68, 157
Militia, 593-4, 606 (see also APPOINTING POWER)
MISCELLANEOUS PROVISIONS
Committee, 32;—report, 365-6;—draft, 588-9, 599-600, 604
Debate, 308, 390-400, 444, 552-6, 570-73, 594-5, 602-3, 629, 630-2; common law, 390-2; contracts, 554-5; distribution of powers, 308, 390; elections, 395, 553-4; holdover offices, 392, 553, 588-9; laws, 552, 573; oaths, 393-5; payment of state debts, 554-5; qualifications for office, 572; religious test, 395; special privileges, 597-8, 602; taxation, 396-400, 554, 571-2; terms of office, 572-3; treasurer, 395-6, 554; vacancies, 254, 392-3, 553, 555-6
Mississippi, 129, 137, 157, 158, 162, 178, 280, 281, 491
Missouri, 62, 157, 162, 178, 218, 280, 281
Montgomery *vs.* Bruere, 234
Morris Canal Company, 64 (see also Internal improvements)
Naturalization (see SUFFRAGE, citizenship)
Newark, 91, 122, 256, 259, 269, 380
Newark Morning Post, 48-9
New Brunswick, 92, 240
New Hampshire, 105, 158, 178
New Jersey, 55, 68, 96, 105, 129-30, 132, 134, 240, 294, 295; college of, 555, 580, 581 (see Jerseys)
New Jersey State Gazette, 59
New Jersey Supreme Court (cases cited): Montgomery *vs.* Bruere, 234;—*vs.* Hall, 154-5;—*vs.* Paul, 412
New York, 22, 34, 54, 55, 61, 62, 65, 66, 72, 77, 83, 96, 105, 143, 144, 147, 153, 154, 155, 156, 178, 191, 217, 226, 235, 240, 244, 260, 294, 296, 311, 345, 349, 361, 396-8, 400-2, 422, 458, 469, 472, 535, 558
New York, City of, 242, 244, 405, 557
New York Supreme Court (cases cited): Drake *vs.* State, 144; N. Y. *vs.* Croswell, 144, 146;—*vs.* Gordon, 413;—*vs.* Stoughton, 154
North Carolina, 61, 132, 280-1

Oaths, 393-5
Officers of convention, 26, 43, 75, 597, 600-1, 603-4
Ohio, 157, 162, 218, 401
Orphans' court, 249-54
Pardons (see EXECUTIVE, court of pardons)
Parliament, 1, 110, 160, 173, 186, 191, 196, 201, 215, 309, 458, 468 (see also Great Britain and England)
Parties (see Politics)
Paupers (see SUFFRAGE)
Pennsylvania, 22, 32, 34, 55, 68, 72, 77, 82, 85, 102, 153, 178, 182, 203, 210, 216, 217, 218, 240, 244, 285, 296, 311, 316, 318, 345, 370, 458, 486, 492, 494-5, 527, 529, 535, 568
Philadelphia, 67, 122, 242, 244, 329, 405
Photograph of convention, 555, 564, 575
Pittsburgh, 244
Poland, 47
Politics, 13-14, 29, 48, 50, 67, 77-9, 92, 133, 176-8, 183, 189-90, 193, 204, 217, 256-7, 258, 260-2, 279-80, 293-4, 332-5, 349-64, 369-77, 384-9, 427, 441-2, 448-9, 487
Population, 70, 91, 254-5, 282-7, 363
Prayer, 18-21, 597
Preamble, 614
Presbyterian Congregation, 37
Princeton, 555, 580, 581
Printing, 22, 25, 26, 43, 50, 452, 522-3, 580, 581, 600, 601, 602, 604-5, 606, 607, 608-9, 610
Procedure (see Rules)
Proclamations, 7, 12
Public works (see Internal improvements)
Qualifications for office (see SUFFRAGE)
Railroads (see Internal improvements)
Registration Laws (see SUFFRAGE)
Religion, 18-21, 141, 346-7, 401-2, 404, 405, 551
Religious test, 395
Reporter, 25-6, 32-7, 38, 47-50
Representation, 64-5, 282-7, 363, 605-6 (see also LEGISLATURE)
Retrospective laws, 98, 157-8
Revision committee, 367, 422, 439, 452, 579, 598, 604
Rhode Island, 58, 62, 71, 324, 413, 528
Rights and privileges (see BILL OF RIGHTS); social basis of, 589
Riots, 58, 67, 71-2
Roll call (see Votes n.)
Rome, 64, 194, 197-8
Rules
Committee, 20;—report, 22-5
Debate, 18-20, 22-5, 26-9, 30, 35, 36, 38, 40-3, 51, 76, 138-9, 174, 255, 276, 367, 422, 560, 570, 575, 582, 589, 590, 591, 592-3
School Fund (see LEGISLATURE)
Scotland, 215, 324
Senate (see APPOINTING POWER; EXECUTIVE; LEGISLATURE), 349-51
Separation of powers (see Distribution of powers)
Sheriff (see APPOINTING POWER, civil officers)
South Carolina, 61
Special privileges (see LEGISLATURE and BILL OF RIGHTS)
State credit (see LEGISLATURE)
State prison, 130, 135, 163, 350, 356, 400, 502, 514, 553, 628
States, references to other, 34, 61, 62, 68, 72, 82, 83, 85, 86, 110, 111, 126, 129, 131, 137, 139, 140, 143, 148, 154, 162, 199, 200, 203, 216-18, 222, 226, 227, 239-44, 269, 274, 280-1, 285, 311, 322, 324, 355, 362, 401-3, 405, 406, 412, 413, 417, 419, 424, 427, 458, 486, 489, 504, 515, 527-8, 531, 535, 557, 568 (see also names of states)
Stationery, 31
SUFFRAGE
Committee, 31;—report, 39-40;—draft, 584
Debate, 76-111, 116-38, 140, 163, 190, 384-9, 429-44, 553-4, 572-3, 590-1; bribery, 104, 433; citizenship, 76-87, 433; cost, 118, 124-6, 131-6, 138, 277, 437, 442; felons, 95-96, 97-9, 433; literacy, 96, 103-4, 434; paupers, 87-91, 429-33; property, 535; qualifications for office, 99-101, 535, 572; registration laws, 91-2; students, 92-5; time of elections, 111, 116-38, 436-44, 591
Supreme Court (see New Jersey S. C., New York S. C., United States S. C.)
Surrogate (see APPOINTING POWER; JUDICIARY)
Taxation, 133, 135, 277, 286-7, 343-5, 366, 396-400, 524-6, 534, 554, 571-2
Tennessee, 55, 129, 132, 158, 218, 280-1
Tenure (see APPOINTING POWER)
Townships (see LEGISLATURE, counties), 254-5
Treasurer, 130, 132, 135, 213-14, 239, 366, 395-6, 526, 554
Trenton, 246, 269, 270
Trials (see BILL OF RIGHTS)
Trusteeship (see LEGISLATURE)
United States, 32, 33, 76, 79, 80, 84-7, 109-10, 141, 154, 157, 170, 183, 192-3, 196, 197, 200-1, 202-3, 205, 206, 215, 241, 272, 290, 291, 294, 304, 305, 306, 307, 311, 327, 347, 353, 355, 361, 391, 413, 458, 470, 486, 487, 491-2, 494, 515, 541, 547 (see also Constitution (U. S.))

U. S. Senators (see VOTES, Appointing Power)
United States Supreme Court, 241; cases cited: U. S. *vs.* Pieris, 413;—*vs.* Price, 154
Utica, 244
Vacancies, 137, 217, 218-21, 254, 306, 309, 392-3, 504-5, 518, 519, 553, 555-6, 588-9 (see also EXECUTIVE)
Vested Rights (see BILL OF RIGHTS)
Veto power (see EXECUTIVE)
Virginia, 22, 32, 61, 83, 236, 243
Votes (see below)
Voting (see SUFFRAGE and Elections)
West Jersey (see Jerseys)
Whigs (see Politics)

VOTES

N. B. All the votes taken in the convention are listed below alphabetically by subject, with the eight topics assigned to the major committees printed in SMALL CAPITALS and analyzed into their component parts. **Bold face** numerals indicate that a roll call vote was taken.

Adjournment, 138, **580**
Adoption of constitution, 605-6, 636
AMENDMENT, 69, 73, 573, 574, **577**, 594-5
Constitutional conventions, 73, 74, **577**, **579**
Submission to people, 74, 75
APPOINTING POWER, 275, 377, 380, 383, 384, 502, 510, 593-4
Civil officers, **503**, **504**, **507**, **508**, **523**, 603
Judiciary, 364, 386-7, 389, 495, 496, **498**, **502**, **509**, 510, **524**
Militia, 347-8, 481, 482, 484, 485
Tenure, 496, **497**
U. S. senators, 510
Vacancies, **504-5**
BILL OF RIGHTS, 139, 140, 141, 162, 163, 171, 172, 412, 414, 589-91, **592**
Bail, 157
Double jeopardy, 157, 413, **590**
Eminent domain, 161, **417**, **418**, **592**
Imprisonment for debt, 168, 418, 419, 420, **421**, **424**, 429
Juries, 152, 172
Libel, 148
Natural rights, 409, 411
Religious liberty, 142
Vested rights, 157-9
Census, 43
Constitution, 600
Date of adoption, 607
Signing, 606, 607, 608
Delegate's supplies, payment for, 595, **596**
Draft, preliminary, **590**
EXECUTIVE, 445, 450, 593
Appointing power, 226
Court of pardons, 213, 222, 223, 225, **451**
Election, 175, 224, 453
Eligibility, 214-18, **446**, **447**, **448**
Impeachment, 600
Qualifications, 175, 453, 481
Residence, 223-4
Term, 175, 214, 226, **445**
Vacancies, 219, 221, 556
Veto, 205, 206-7
Expenses, 609
Guests, 31, 38
Journal of convention, **602**, 608
JUDICIARY, 454, 460, 593
Courts: chancery, 240, 241, 475, **476-7**; common pleas, 254, 479; errors and appeals, 228, 233, 237, 455, 472, 473, 474; orphans', 254, 477, 478, 479; reconciliation, 174, 408, 579-80; supreme, 242, 246, 270, **476**
Impeachment, 238, 239, 273, 474, 475
Justices of the peace, 259, 264, 480
LEGISLATURE, 337, 510, 514, 517, 518, 550, 552, 591, 592
Appointment, 303, 307, 309, 517, **518**
Apportionment, 297
Constitution, 287, **512**, **513**
Contracts, **547**, 593
Counties, 336, **544**
Divorces, 336, **545**
Eminent domain, 569, **570**
Foreclosure, **568**
Freedom of debate, 303
Lotteries, 336
Number, 297
Pay, 300, 338, **514**, **516**, **517**
Revenue bills, 310
Rules, 297
School fund, 337, 401, 407, 550, 552, **567**
Special privileges, 303, 312, 314, 318, 323, 324, 332, 336, **528**, **529**, **530**, **539**, **540**, **541**, **542**, **559**, **560**, **561**, **562**, **563**, **565**, **566**, **598**, **602**
State credit, 310
State debt, 310, 311, 343, 519, **520**, **521**, **522**, **526**, **527**, 554-5, 595
Term, 282, 292, 296, **512**, **513**
Trusteeship, **549**, **566**
Vacating previous offices, 309, **519**
Librarian, 31, 608
MISCELLANEOUS PROVISIONS, 393, 444, 594, 595, 602-3
Civil officers, 604
Common law, 392
Distribution of powers, 390, 591
Elections, 343, 395, 553, 554
Holdover officers, 392, 553

Laws, 552, 573
Oaths, 394, 395
Pay by legislature, 554-5
Religious test, 395
Taxation, 400, 572
Treasurer, 396, 554
Vacancies, 392, 553, 556
Officers of convention, 17, 25-26, 597, 598, 601, 604
Prayer, 21, 597
Preamble, 589
Printing, 25, 26, 50, 601, 605, 607, 609, 610
Reporter, 35, 37
Rules, 20, 28, 29, 30, 76, 174, 276, 422, 560, 591-3
Revision Committee, 422
Stationery, 31
SUFFRAGE, 95, 96, 110, 591
Bribery, 104, 433
Citizenship, 87, 433
Felons, 96, 99, 433
Literacy, 434
Paupers, 90, 432-3
Qualifications for Office, 100, 101, 105, 109, 110, 435, 436
Registration laws, 92
Time of election, 124, 138, 439, 443, 444
Title, 589

Individual Index

Names of the delegates are printed in SMALL CAPITALS.

ALLEN, WILLIAM RIDG, 15, 31, 33, 56, 67-8, 71, 75, 95, 98, 110, 140, 148, 158-9, 163-4, 165, 200-1, 220, 222, 238, 255, 259, 270-1, 285-6, 300, 301-2, 303, 307, 308, 309, 311, 312, 318-19, 323, 329, 340, 343, 347, 367-8, 372, 380, 382, 407, 415, 418-19, 420, 437, 443, 448, 449, 472, 501, 502, 516, 527, 528, 529, 539, 543, 544, 546, 557, 569, 579, 597, 637
Arrowsmith, Thomas, 14
Bancroft, George, 458
Barnave, Antoine, 454
Beck, Rev. Mr., 63, 390
BELL, JOHN, 17, 32, 53, 418, 449, 637
Blackfan, Crispan, 14
Blackstone, Sir William, 192, 409
Boswell (see Phillips and Boswell)
Boyles, A., 14
BUCK, JOSHUA, 15, 29, 31, 39, 499, 637
Broome, John E., 14
Brougham, Lord, 227
BROWN, GEORGE HOUSTON, 17, 31, 46, 211, 212, 215, 216, 218, 224, 293-4, 296, 307, 315, 325, 334, 496, 498, 503-505-6, 514-15, 516, 542-3, 545, 546, 554, 558-559, 564, 565, 574, 575, 576, 594, 597, 603, 637
BROWNING, ABRAHAM, 14, 15, 20, 22-25, 29, 31, 32, 41, 49, 50, 53-4, 54-5, 57, 60-1, 74, 85-6, 95-6, 97, 99, 101, 104-5, 106, 109, 121, 142, 145-6, 152, 157-8, 159, 160, 170, 171, 207-8, 213, 221, 222, 223-4, 235-7, 238-9, 247, 254, 255-6, 257, 258-9, 262, 264, 267-8, 297, 304-5, 308, 310, 313-14, 318, 333, 336, 339, 340, 341-2, 347, 353-6, 379-80, 381, 384-5, 386, 388, 389, 390, 400, 474, 518, 519-1, 524-6, 526-7, 539, 542, 543, 547, 562, 569-570, 573-4, 575, 589, 590, 591, 597, 602, 606, 637
Carnahan, Rev. James, 555, 580
CASSEDY, JOHN, 15, 20, 32-5, 26, 31, 43, 159, 161, 276, 292, 300, 308, 316, 326, 338, 414, 417, 419, 432, 453, 521, 568, 569, 570, 637
CATTELL, ALEXANDER GILMORE, 17, 31, 276-82, 376, 422, 438, 444, 451, 493, 498, 506, 507, 609, 637-8
Channing, Dr. William E., 169, 410
CHILD, FRANCIS, 16, 26, 27, 31, 34, 38, 41, 43, 47, 51, 54, 55, 56, 57, 61, 62, 67, 74, 76, 89, 91, 111, 115, 119-20, 126-7, 128, 138, 139, 177, 184, 210, 238, 240, 254, 256, 262, 275, 286, 297, 324, 329-30, 335, 364, 367, 368, 373, 386, 396-7, 400, 413, 414, 415, 418, 420, 425, 428, 430-1, 443, 446, 453, 465, 472, 473, 478, 485, 493, 509, 516, 523, 526, 530, 542, 543, 545, 546, 547, 549, 552, 561-2, 564, 565, 566, 568, 569, 573, 574, 575, 576, 581, 596, 602, 638
CLARK, PETER H., 16, 28, 31, 37, 51, 81-2, 91, 96, 98, 99, 100, 101-2, 103, 104, 115, 116, 122-3, 127, 140, 152, 154, 155, 175, 185-6, 190, 196, 217-18, 221, 246-7, 264-5, 266, 267, 289-90, 292, 335, 347, 348, 393, 394, 410, 411, 423, 424-5, 429, 434, 476, 496, 508-9, 573, 574, 575, 576, 590, 597, 602, 603, 607, 638
CONDIT, SILAS, 16, 28, 31, 33, 36, 73, 84, 87, 104, 108, 109, 110, 121, 140, 141, 154, 162, 174, 175, 176-7, 180, 184-5, 206, 213, 257, 258, 282-4, 285, 286, 287, 309, 310, 312-3, 314, 316-17, 321-2, 323, 339, 347, 362-3, 381, 384, 389, 394, 395, 430, 435-6, 461-2, 466, 500-1, 505, 512, 513, 524, 526, 543, 549, 551, 552, 557, 564, 575, 580, 582, 594, 596, 597, 603, 605-6, 608, 638
CONNOLLY, BERNARD, 16, 31-32, 263, 448, 449-50, 472, 473, 476, 496, 502, 512, 519, 544, 545, 546, 567-8, 574, 604-5, 608-9, 638
Cooper, William D., 14
Cornbury, Lord, 227
Dallas, George M., 353, 439
Deruelle, Rev. Mr., 238
DICKERSON, MAHLON, 16, 17, 29, 31, 55, 56, 82, 84, 97, 102, 168, 193-4, 202, 239, 240, 271-4, 275, 286, 287-8, 289, 290, 291, 292, 309-10, 347, 352-3, 355, 380, 385, 414, 418, 482-3, 484, 485, 500, 503, 511, 515, 574-5, 596, 603, 605, 638
Dickey, William, 14
Dodd, Daniel, Jr., 18

Randall, Joseph R., 17, 31, 174, 567, 639
Rankin, Daniel, 14, 15, 19, 31, 37, 96, 169, 214, 557, 573, 638
Rathbone, Lord, 147
Rawlinson (guard. William Griffith, which one)
Ewing, Chief Justice Charles, 252, 469, 487
Ewing, William Brigham, 15, 26-7, 28, 31, 34, 36, 37, 38, 51, 63-4, 89-90, 95, 115, 121, 125-6, 139, 140, 164, 171, 172, 174, 178, 210, 214, 220, 228, 247-8, 249-50, 257, 258, 266, 274-5, 278, 288, 289, 302, 304, 305, 308, 311, 327, 335, 336, 338, 340, 347, 349-50, 364, 368-70, 372, 384, 388, 420, 435, 439, 443, 445, 471, 487, 495, 510, 511, 517, 518, 523, 551, 561, 564-5, 575, 580, 582, 583, 595, 604, 605, 607, 639
Field, Richard Stockton, 14, 16, 18, 19, 20, 28-9, 31, 32, 34-5, 36, 41, 49, 56-7, 62-3, 64, 65, 68, 69, 70, 71, 84, 85, 103-4, 109, 146-8, 162, 168, 179, 186-90, 266-1, 262, 267, 295-6, 304, 305, 306, 307-8, 325, 332, 334, 343, 346, 347, 356-60, 373, 384, 389, 400-2, 403, 404, 405, 407, 413, 415-16, 421, 430, 434, 448, 449, 461, 462, 475, 476, 483, 488-92, 494, 497, 530, 531, 535, 538, 559, 562, 573, 576, 580, 599, 639
Field, Justice, 467
Fish, Gardner Brayfield, 16, 32, 366, 542, 543, 544, 552, 553, 572, 639
Fox, Charles James, 147
Franklin, Benjamin, 193
Franklin, Gov. William, 369
Frelinghuysen, Frederick T., 383, 439
Garabrant, Christopher, 389
Gerry, Elbridge, 193
Gilchrist, Robert, 16, 31, 115, 175, 309, 310, 386, 394, 396, 411, 419, 420, 447, 498, 501, 516, 519, 520, 550, 552, 597, 601, 639
Green, Henry Woodhull, 14, 16, 29, 30, 31, 39, 49, 63, 65, 69-70, 71, 73, 123, 124, 151, 172, 201-5, 252-3, 263, 276, 291, 303-4, 305, 309, 336, 407, 420-1, 422, 427-8, 429, 439, 449, 451, 457-9, 469-71, 474, 476, 478, 485-9, 494-5, 496, 497, 498-9, 501, 503, 504, 506, 507, 523, 540, 547, 553, 557, 563, 565, 568, 569, 573, 581, 590, 591, 593, 594, 602, 606, 607, 608, 639
Green, James S., 14
Griffith, William (Rawlinson, pseud.), 58, 99, 126, 278, 389, 443
Gummere, Samuel R., 14
Hamm, Thomas Griffith, 16, 31, 97, 115, 138, 152, 163, 639
Haines, Gov. Daniel, 12, 14, 15, 31, 609, 633
Hall, Rev. John, 22, 57, 75, 138, 172, 319, 337, 452
Halsted, Oliver Spencer, 14, 16, 31, 34, 56-7, 148, 158-9, 167-8, 202-3, 207, 307, 314, 315-20, 322-3, 347, 495, 503, 547, 554-5, 577-8, 592, 599, 602, 608, 639
Halsted, O. S., Jr., 14
Halsted, W., Jr., 14
Hamilton, Alexander, 144, 187, 195, 202, 576
Hamilton, Samuel R., 14
Hancock, Dr., 21
Harrison, Pres. William Henry, 483
Hasbrouck, Samuel, 17, 57, 639
Helmer, Daniel, 16, 31, 639
Hornblower, Joseph Coerten, 14, 16, 17, 21, 25, 26, 28, 31, 35, 38, 41, 43, 44, 46, 49-50, 54, 55, 56, 57, 60, 62, 69, 70, 71, 72-3, 75, 76, 77-8, 80-1, 82, 83-4, 87, 89, 90, 91-3, 94, 95, 97, 98-99, 100, 108, 109-8, 109, 110, 111, 117, 120, 122, 123, 126, 127, 129, 130-1, 139, 140, 141, 142, 143, 145, 148, 152-4, 157, 159-60, 166, 167, 168, 169, 171, 173-4, 175, 180-4, 190-1, 201, 203, 206, 209, 210, 211, 213, 214, 215, 216-17, 218, 219, 220, 221, 222, 223, 224, 229-31, 233-4, 237, 240, 241, 242, 247, 258-1, 259, 260, 261, 265, 266-8, 270, 276, 278, 283, 297, 298-3, 303, 307, 308, 309, 311, 312, 314, 320, 327-9, 330, 335, 336, 340, 341, 342, 347, 366, 378, 384-1, 382, 383, 386, 388, 390, 391, 392, 393, 394, 398-9, 401, 402-3, 406-7, 410-11, 412, 413, 415, 418, 420, 426-6, 430-4, 438, 432, 434, 436, 438-41, 447, 449, 451, 453, 459, 463, 464-5, 472, 474, 475, 476, 479, 484, 489, 500, 506, 508, 513, 518, 524-4, 526, 528, 536, 545, 546, 547, 548, 549, 550, 551, 557-8, 561, 562, 564, 565, 566, 567, 569, 575, 578, 579, 590, 591, 596, 600, 602, 603, 605, 606, 640
Hibbell, Richard W., 14
Jackson, Gen. Andrew, 101, 188, 195
Jaques, Messrs, 16, 32, 53, 54, 83, 98, 102, 109, 141, 145, 162, 168-9, 172-3, 174, 221, 239-40, 309, 311, 315, 324-5, 326, 327, 329, 330, 332, 337-3, 341, 364, 367, 375, 377, 390, 393, 395, 396, 397-8, 400, 407, 408, 409-10, 430, 452, 454-60, 461, 467, 475, 497, 502, 513, 515, 519-20, 522, 541, 576, 578-9, 596, 640
Jay, John, 187
Jeffers, William N., 14
Jefferson, Pres. Thomas, 169, 236, 376, 410, 570
Kennedy, —, 73, 276, 289
Kinney, Presidas B., 17, 28, 32, 66-7, 308, 321, 366, 373, 382, 392, 404, 408-1, 462, 640
Kinney, Robert S., 17, 28, 32, 66, 74-7, 78, 82-3, 84, 85, 86, 128, 131-2, 157, 166, 178, 184, 185, 187, 215, 238, 247, 248, 251, 254, 259, 288, 297-8, 344, 345-7, 348, 370-1, 374-5, 376, 386, 389, 408, 446, 447, 448, 462, 463, 476, 486, 537-8, 555, 556, 559, 560, 561, 564, 572, 584, 585, 588, 589, 593, 597, 600
Kent, Chancellor James, 170, 236, 389
Kidder, Rev. T. P., 39, 57, 266, 268, 408, 541, 555, 638
King, Rufus, 195
Kirkpatrick, Chief Justice, 252
Lamb, Benjamin, 14, 32, 366, 638
Lambert, John H., 17, 32, 639, 640-1
Lamson, [illegible], 14
Lewis, A. A., 14
Livingston, Gov. William, 275
McClintock, C. C., 14, 638
McCloskey, [illegible], 14
McCrea, [illegible], 14
McLean, Dr., 38
Madison, Pres. James, 39, 195, 197
Marshall, Lord, 147
Marsh, Ephraim, 14, 16, 32, 182, 219, 221, 222, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641
Marshall, John, 228, 470
Mason, George, 193
Michael, John Vreeland, 15, 20, 21, 31, 35, 173, 288, 307, 308, 310, 335, 336, 337, 379, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641
Mercer, Gen. Hugh, 195
Mercer, John F., 195
Miller, Justice, 467
Monroe, Pres. James, 195
Morris, Governeur, 191
Nash, David, 16, 28-5, 32, 34, 36, 48-9, 53, 55, 61, 78, 79-80, 85, 90, 94, 99-100, 104, 105-6, 117-8, 125, 127, 140-1, 174, 177-8, 222, 233, 237, 239, 253-4, 259, 286, 305, 311-12, 324, 325, 331, 343-4, 345, 346, 360, 365, 371, 388, 392, 393, 394, 395, 396, 398, 399, 400, 415, 421, 426, 431-2, 435, 443, 447, 464, 465, 469, 470, 476, 484, 494, 504, 505, 506, 508, 521, 541, 559, 561, 569, 572, 573, 594, 596, 640
Naylor, William, 18
Neighbour, David, 16, 32, 641
Nevius, James S., 14
Ogden, Elias Hanley Daniel, 16, 28, 31, 32, 46, 49, 55-6, 65-6, 74-5, 81, 110, 153, 154, 157, 162, 168, 172, 174, 231-3, 235, 268, 281-2, 285, 286, 288, 303, 330-1, 338, 361, 364, 374, 377, 378, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641
Parker, Charles, 14
Parsons, James, 16, 19-20, 27, 28, 29, 31-2, 34, 35, 37, 38, 39, 41, 44, 45, 46-7, 48, 49-50, 52, 53, 54, 55, 56, 57, 58-9, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641
Parsons, William, 18, 44, 275, 276, 611, 632
Paterson, Justice, 189, 190
Pennington, William, 14, 391
Phillips & Jaques, 22, 43, 602, 609
Pickett, Jonathan, 16, 20, 25, 29, 32, 47, 53, 57-8, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641
Pitney, Jonathan, 15, 31, 46, 309, 388, 535-6, 641
Polk, Pres. James K., 353, 439
Porter, Gov. D. R., 182
Potts, Joseph C., 14
Potts, Stacy C., 14
Randolph, John, 169
Randolph, Joseph Fitz, 16, 19, 26, 27, 31, 51, 54, 71-2, 76, 94, 97, 98, 99, 110, 118, 120, 124-5, 127, 132-3, 138, 140, 141-4, 148, 151-2, 159, 161, 162, 241, 248-9, 251, 253, 254, 255, 276, 277, 297, 316, 332, 339, 343, 344, 347, 357, 377,

381-2, 392-3, 395, 396, 408, 422, 436-7, 439, 442-3, 444-5, 461, 462, 475, 476, 477-478, 484, 492-3, 500, 510, 515-6, 517, 528, 548, 549, 556, 565, 570, 589, 591, 595, 596, 597, 601, 605, 607, 609, 641
Reading, James N., 14
Redmond, James M., 14
Reed, Rev. Benjamin N., 47, 101, 213, 271, 510
Rush, Samuel, 388
RYERSON, MARTIN, 17, 20, 25, 26, 29, 30-1, 40, 41, 43, 46, 50, 54, 56, 57, 70, 76, 78-9, 83, 87, 93-4, 174, 175, 176, 177, 201, 206, 214-15, 220-1, 226, 233, 234, 235, 237, 238, 239, 240, 242, 246, 255, 256, 259-60, 261, 262, 264, 265, 276, 292, 294-5, 310, 312, 315, 319, 322, 323, 333-4, 336, 339, 340-1, 342-3, 344, 347, 361, 368, 384, 385, 393, 396, 415, 417, 418, 420, 422, 424, 425, 426, 427, 429, 440, 444, 445-6, 449, 450, 452, 453, 454, 460, 463, 472, 474, 475, 477, 478, 480, 481, 495, 496, 504, 518, 519, 520, 522, 523, 526, 527, 529, 541, 542, 543, 544, 545, 547, 550, 552, 553-4, 556, 561, 564, 566, 573, 578, 580-1, 589, 591, 592-3, 594, 596, 597, 600, 602, 603-4, 641
Saunders, Thomas J., 18, 609, 611, 632
SCHENCK, FERDINAND S., 17, 31, 34, 108-9, 140, 172, 182-3, 197-200, 221-2, 223, 300, 371-2, 390, 396, 450-1, 530-6, 642
Scofield, J. J., 14
Scott, J. W., 14
Scudder, Smith, 14
Sherman, James T., 14
Sherman, William P., 14
Shreve, Ralph H., 14
SICKLER, JOHN ROWAN, 16, 32, 38, 96, 125, 255, 276, 307, 364, 367, 377, 393, 448, 449, 474, 481, 494, 503, 513-14, 543, 544, 546, 565, 567, 568, 569, 570, 575, 642
Snyder, Gov. (Pa.), 318
Southard, Judge, 234
SPENCER, JONATHAN J., 15, 29, 32, 205-6, 302, 303, 323, 365-6, 392, 439, 642
Spicer, Leaming and, 136
Starr, Rev. Samuel, 31, 51, 148, 255, 365, 481, 582
STITES, WILLIAM, 16, 26, 32, 50, 76, 87, 101, 116, 128, 138, 209, 336, 342, 343, 366, 383, 396, 408, 444, 453, 642
Stockton, Richard, 230, 470
STOKES, CHARLES, 14, 15, 18, 19, 20, 29, 32, 50, 53, 60, 163, 190, 211, 220, 226, 228, 238, 248, 255, 264, 276, 302, 307, 323, 337, 345-6, 347, 386, 393-4, 395, 407, 411, 424, 434, 462, 463, 465, 526, 544, 548, 566, 571-2, 597, 605, 606, 642
Story, Judge Joseph, 170, 389, 470
STRATTON, CHARLES CREIGHTON, 16, 31, 116, 128, 174, 190, 205, 214, 219, 258, 308, 311, 396, 408, 432, 439, 451, 502, 505, 510, 520, 521, 550, 560, 601, 609, 642
SWAIN, JOSHUA, 15, 26, 32, 43, 53, 642
TEN EYCK, JOHN CONOVER, 15, 32, 51-3, 96, 139-40, 141, 153, 154, 170, 224-5, 361-2, 364, 367, 387-8, 438, 485, 509, 511, 548, 642
THOMPSON, RICHARD PARROT, 17, 20, 21, 22, 31, 33, 35, 36, 38, 41, 44, 46, 49, 50, 56, 66, 74, 164-5, 174, 175, 178, 209-10, 211, 215, 218, 221, 223, 228, 231, 233, 235, 237, 247, 255, 262, 271, 276, 281, 284-5, 287, 292, 298, 408, 409, 417, 418, 463-4, 465, 477, 494, 506-7, 509, 560, 573, 597, 601, 603, 604, 605, 606, 607, 642
THOMPSON, JUDGE SMITH, 470
THOMSON, JOHN RENSHAW, 16, 29, 31, 39-40, 76, 88-9, 111, 138, 161, 162, 163, 164, 166-7, 168, 190, 221, 237, 348, 419-20, 421, 423-4, 522, 642
Thomson, W., 14
Tochman, Maj. George, 38, 42, 47
Tucker, Samuel, 6
Tyler, Pres. John, 196, 446
VANARSDALE, ELIAS, 16, 22, 26, 29-30, 31, 49, 97, 123, 148-51, 162-3, 208, 213-14, 226-8, 238, 242-6, 256, 259, 264, 269-70, 292, 296, 301, 336-7, 339, 342, 364, 395, 396, 409, 421, 422, 424, 439, 445, 446-7, 452, 474, 547, 552, 554, 574, 580, 582, 603, 604, 642
Van Loan, M. P., 535, 564
Vroom, George A., 14
VROOM, GOV. PETER D., 14, 17, 29, 31, 56, 87, 91, 95, 100, 101, 110, 111-15, 133-7, 138, 144-5, 148, 154-5, 159, 160-161, 178-82, 201, 202, 206, 213, 215-16, 219, 241, 251-2, 266-7, 269, 270, 278, 279, 286-7, 288-9, 291, 293, 295, 297-8, 301, 302, 303, 305, 307, 309, 310, 311, 312, 313, 315, 317-18, 323, 325-6, 327, 337, 338-9, 342, 344, 364, 378-9, 380, 381, 382-3, 394, 412, 413, 414, 416-17, 439, 469, 503, 506, 511, 515, 516, 524, 526, 527, 536-7, 539, 542, 548, 549, 552, 553, 555, 556-7, 558, 559, 560, 568, 578, 582, 592, 595, 596, 597, 606, 607, 610, 642-3
Wack, Rev. Mr., 316
Wall, Garret D., 14
Walpole, Sir Robert, 196
Washington, George, 230, 235, 470
Wayland, Prof. Francis, 169, 410
Webster, Daniel, 298
Webster, Noah, 79

WESTERVELT, ABRAHAM, 15, 32, 174, 605, 643
Wheaton, 155
White, John Moore, 14
Whitehead, Asa, 14
Whitehead, Ira C., 14
William IV (Great Britain), 227
WILLIAMSON, ISAAC HALSTEAD, 14, 16, 17, 28, 30, 31, 35-6, 37, 42, 54, 70, 97, 154, 161, 221, 222, 241, 257, 268, 270, 309, 316, 322, 339, 340, 376-7, 392, 416, 418, 429, 469, 495, 542-4, 585, 600-1, 603, 604, 606, 608, 610, 643
WILLS, MOSES, 15, 32, 39, 43-44, 70, 97, 310, 326, 329, 452, 550, 643
Wilson, James, 14
Witherspoon, Dr. John, 21
WOOD, WILLIAM NELSON, 16, 31, 45, 56, 72, 74, 76, 87, 92, 96, 120, 128, 214, 216, 226, 308, 380, 383-4, 395, 400, 446, 504, 522-3, 524, 581, 643
Woodruff, Aaron D., 383
WURTS, ALEXANDER, 16, 31, 36, 38, 54, 64, 70, 75, 76, 84, 97, 118-9, 128-9, 157, 172, 174, 221, 225-6, 276, 292, 306, 309, 312, 314, 334-5, 336, 341, 363-4, 367, 372, 384, 405-6, 409, 548, 555, 560, 600, 604, 609, 610-11, 643
Young, Rev. Mr., 47, 111, 300, 422
Zabriskie, A. O., 14
ZABRISKIE, JAMES C., 16, 26, 27, 29, 31, 37, 43, 56, 68-9, 92, 94-5, 98, 99, 100, 166, 167, 169-70, 174, 177, 194-7, 205, 206, 207, 221, 225, 234, 247, 256-7, 261, 275, 290-1, 300, 302, 303, 305-6, 307, 311, 312, 316, 321, 323, 332-3, 336, 339, 347, 348, 350-2, 361, 370, 376, 390-1, 395, 408, 422, 423, 427, 437, 443, 444, 446, 476, 478, 481, 484, 493-4, 504, 506, 514, 516, 560, 561, 564, 576-7, 594, 597-8, 600, 605, 606, 607-8, 610, 611, 643